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ABSTRACT

The handbook is intended to serve as a basic guide to California practices in the use of contracted nonpublic school (NPS) or agency (NPA) services to provide a free appropriate public education to eligible handicapped children. The handbook covers: an overview of requirements for nonpublic, nonsectarian special education school and agency services; an overview of state certification requirements; contracting provisions and procedures; and funding provisions for contracting nonpublic school and agency services. Appendices contain a glossary, federal requirements, a sample master contract, a sample individual services contract, required courses of study for pupils in California private schools, samples of administrative materials, a copy of a relevant court consent decree, and information on interagency and residential placement. (JDD)

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Handbook for Contracting with Nonpublic Schools for Exceptional Individuals

A Guide for Contracting Between Local Educational Agencies and Nonpublic, Nonsectarian Schools and Agencies for Providing Special Education and Related Services to Exceptional Individuals

EC 232 487

California Department of Education
Sacramento, California 1990

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Handbook for Contracting with Nonpublic Schools for Exceptional Individuals

A Guide for Contracting Between Local Educational Agencies and Nonpublic, Nonsectarian Schools and Agencies for Providing Special Education and Related Services to Exceptional Individuals

Prepared by
Wayne K. Miyamoto
Project Coordinator

Publishing Information

The *Handbook for Contracting with Nonpublic Schools for Exceptional Individuals* was prepared by Wayne K. Miyamoto, Executive Director for the California Association of Private Specialized Education and Services, working with the Special Education Division of the California Department of Education and the Project Field Working Committee, identified on pages 4 and 5 of the handbook.

As it is required to do by *Education Code* Section 33308.5, the Department of Education cautions the readers that except where statutes or regulations are quoted or form the basis of any statement in this handbook, the information presented is merely exemplary and compliance with the handbook is not mandatory.

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Preface

This ***Handbook for Contracting with Nonpublic Schools for Exceptional Individuals*** is intended to serve as a basic guide to effective practices in the use of contracted nonpublic school or agency services to provide a free appropriate public education to eligible handicapped children. It is not intended to serve as a legal analysis of all laws and regulations which affect contracted special education and related services in California. Except where statutes or regulations are referred to or form the basis of any statement, this information is merely exemplary and compliance is not mandatory.

This handbook is also not intended to serve as a sole resource for field professionals involved in the provision of special education and related services to eligible pupils. Rather, it is designed to assist public and nonpublic school or agency professionals in their common understanding and effective use of the contract process to appropriately serve pupils and their families.

Public and private professionals working together can be very effective in providing excellent services to handicapped children. Without this necessary partnership between professionals, parents and children are deprived of the cooperation they deserve in their search for an appropriate program.

This handbook is also intended to provide guidance on the effective and appropriate use of contracted special education and related services pending the completion of several changes in law, regulations, and state policy advisories issued to the field. Therefore, it is anticipated that several areas and procedures described in this handbook may be subject to change.

Finally, this handbook is designed by its loose-leaf format to accommodate changes in both state and federal laws, regulations, and policies which require further clarification to public and nonpublic school and agency field professionals. It is hoped that these updates for further clarification can be completed with the same level of public and private sector partnership and cooperation which made this document possible.

SHIRLEY A. THORNTON
Deputy Superintendent
for Specialized Programs

PATRICK CAMPBELL
Director, Special Education
Division

ALLAN SIMMONS
Administrator, Compliance
Assistance Services

5/90

Introduction

Contracting for the provision of special education and related services for exceptional pupils in California nonpublic, nonsectarian schools (NPS) and agencies (NPA) is made under three basic provisions of law:

- Eligible pupils are those for whom an Individualized Education Program (IEP) Team determines that there are no other appropriate public school programs available that meet the pupils' needs, as specified by the IEP.

- Each placement is made through a contract between the local education agency (LEA) making the placement and the appropriate NPS or NPA.

- The nonpublic school or agency must be certified by the State Department of Education.

Since the enactment of the **Master Plan for Special Education** in 1980 by Senate Bill 1870 (Rodda), special education and related services provided by nonpublic schools and agencies have served an integral role in the full continuum of special education and related services available to districts, county offices of education, special education local plan areas, and parents.

Consistent with both federal and state laws, the role of contracted nonpublic school and agency services continues to be one of the options of last resort for the LEAs meeting the federal mandate to provide a free appropriate public education to all eligible exceptional pupils in the state.

When the three basic provisions of law are met in considering a nonpublic school or agency placement through the development of the pupil's individualized education program (IEP), the contracted services provided by the NPS/NPA are considered a free appropriate publicly provided education by the local education agency.

As changes in both public and nonpublic school/agency personnel occur, there is a continuing need to provide training and technical assistance for such personnel to ensure their conformance to federal, state, and local requirements for the appropriate use of contracted special education and related services provided by California state certified nonpublic, nonsectarian special education schools and agencies.

As numerous state requirements have been modified in the appropriate use of contracted NPS or NPA services since the original enactment of the Master Plan, it was essential that the state provide leadership in providing field technical assistance and a ***Handbook for Contracting with California Nonpublic, Nonsectarian Schools and Agencies to Provide Special Education and Related Services to Exceptional Individuals*** for both public and nonpublic school and agency professionals.

The purpose of such a handbook would be to provide a procedural guide on how to appropriately provide contracted special education and related services to exceptional individuals with state certified NPS/NPA.

Furthermore, the objectives for this handbook are: (1) to clarify existing legal requirements concerning the appropriate contracted use of NPS/NPA to serve exceptional pupils in California; (2) to clarify provisions regarding the state certification of nonpublic, nonsectarian schools and agencies; (3) to clarify provisions relating to state reimbursement of the contracted cost of tuition for a nonpublic school or agency placement, including, but not necessarily limited to, "extraordinary" circumstances under which placement may be required to include educationally necessary related services.

The Handbook's Development

In the spring of 1989, the California Association of Private Specialized Education and Services (CAPSES) submitted a proposal to the State Department of Education, Special Education Division, to implement the development of the handbook. More specifically, the objective of the proposal was as follows:

> Objective: That the Department develop, adopt, and publish a handbook through the efforts of a field working committee composed of State Department of Education staff, local districts, county offices, and nonpublic school and agency representatives throughout the State.

Collaborative discussions between public and nonpublic school professionals in southern California over the need for such a handbook had been occurring regularly prior to the submission of the project proposal. It was proposed that the model of the existing southern California committee of LEAs and nonpublic school representatives, who had already begun efforts to develop a handbook, be replicated to include similar working efforts in northern and central California.

Since the efforts in southern California had already resulted in a written draft of a proposed handbook, developed by the Orange County Department of Education, it was felt that planning for such expanded discussions in selected areas where difficulties in NPS/NPA contracting are frequently addressed by the Department would be less cumbersome and time consuming to complete.

It was felt that the handbook must also be brief and easily read, while addressing the diverse issues and questions relating to specific contractual policies and procedures for nonpublic school and agency special education services. Therefore, this handbook was developed in a three-ring, loose-leaf format with brief descriptions of law or recommended best practice for effective field use.

Wayne K. Miyamoto, contracted Executive Director for the California Association of Private Specialized Education and Services (CAPSES), served as the Project Coordinator. As such, he assumed responsibility for coordinating meetings of the field

working committees and writing the proposed handbook, using the input and review of the field working committees and editorial guidance provided by the Department.

Timeline of Project Activities

Approximately ten full-day meetings with field working committees throughout the state were planned, with the expectation that a draft of the proposed handbook could be finalized for publication not later than October, 1989. The following timeline of project activities was developed for the completion of the handbook:

April 1–May 31, 1989: Literature review and coordination with state organizations concerned with special education programs in California and the appropriate use of nonpublic school and agency programs to serve exceptional individuals.

June 1, 1989: Final selection of members of the project field working committee, with southern, central, and northern California representatives or public and nonpublic school professionals who are directly involved in nonpublic school or agency contract placements. Finalize the contents and scope of the handbook.

July 1, 1989: Submit first comprehensive written draft of the proposed handbook for administrative, program, fiscal, and legal review and input by the Special Education Division and other divisions of the California State Department of Education, as necessary, the State Advisory Commission on Special Education, and interested California local educational agencies.

September 1, 1989: Submit final draft of the proposed handbook to the Special Education Division and other divisions of the California State Department of Education, as necessary, based on the input received in the prior 60 days.

Acknowledgments

The Project Coordinator and the California State Department of Education thank the individual members of the project field working committee and the staff of the Department for their insight and assistance in making this handbook a reality. A list of the members of the project field working committee follows.

Special recognition is also given to Michael Byrne, whose leadership and initiative in developing an initial draft of the *Guide to NPS/NPA Services* was responsible for establishing the need for this project.

Project Field Working Committee

Carol Arnesen, Director
Special Education Division
Orange County Office of Education
Costa Mesa, California

George Belleau, Director
Special Education Local Plan Area
Mono County Office of Education
Bridgeport, California

Louise Bookbinder, Director
Special Education Division
San Diego County Office of Education
San Diego, California

Linda Bourgaize, Director
Special Education Local Plan Area
Santa Cruz/San Benito SELPA
Aptos, California

Michael Byrne, Manager
North Coastal Consortium
San Diego County Office of Education
Oceanside, California

Allen Coltharp, Consultant
Special Education Division (NPA)
State Department of Education
Sacramento, California

Odia Ellison, Program Specialist
Special Education Division
San Diego Unified School District
San Diego, California

Jose Galvan, NPS Specialist
Special Education Division
Los Angeles Unified School District
Los Angeles, California

Linda Gregg, NPS Specialist
Special Education Division
Los Angeles Unified School District
Los Angeles, California

Shirley Haberfeld, Program Specialist
Special Education Local Plan Area
North Region SELPA
Alameda, California

Daniel Halcomb, Director
Special Education Local Plan Area
Sutter County Office of Education
Yuba City, California

Amy Harrison, NPS Representative
Executive Director
Advocate Schools
Riverside, California

David Henderson, Director
Special Education Division
Nevada County Office of Education
Auburn, California

Gerald J. Hime, Consultant
Special Education Division
Los Angeles County Office of Education
Downey, California

Randy Keyworth, NPS Representative
Codirector
Spectrum Centers
Berkeley, California

Judith Maizlish, NPS Specialist
Special Education Division
Los Angeles Unified School District
Los Angeles, California

Bob Minnich, Program Specialist
Special Education Division
San Diego Unified School District
San Diego, California

Rita Moll, NPS Representative
Principal
River Oak Center for Children
Sacramento, California

Project Field Working Committee
(continued)

Audrey O'Neill, Assistant Supt.
Special Education Division
Santa Barbara County Schools
Santa Barbara, California

Devena Reid, Consultant
Special Education Division
State Department of Education
Sacramento, California

Leo Sandoval, Manager
Special Education Division
State Department of Education
Sacramento, California

Jeanne Seals, NPS Specialist
Special Education Division
Los Angeles Unified School District
Los Angeles, California

Tom Smythe, NPS Reviewer
Special Education Division
State Department of Education
Mission Viejo, California

Paul Starkovich, Consultant (NPS)
Special Education Division
State Department of Education
Sacramento, California

Eugene Payne, Program Specialist
San Diego Unified School District
Whittier Center
San Diego, California

Anita Ruesterholtz, Coordinator
Special Education Local Plan Area
Riverside County SELPA
Riverside, California

Dick Schnetzer, NPS Representative
Director of Business Services
Mardan Center for Education Therapy
Costa Mesa, California

Allan Simmons, Manager
Special Education Division
State Department of Education
Los Angeles, California

Susan Spain, Program Specialist
Special Education Division
Marin County Office of Education
San Rafael, California

Kathryn Summers, Consultant
Special Education Division
State Department of Education
Los Angeles, California

Chapter 1

Overview of Requirements for Nonpublic, Nonsectarian Special Education School and Agency Services

California nonpublic, nonsectarian special education school and agency services are governed by legal requirements of federal and state laws and their implementing regulations.

The federal implementing regulations for the Education of the Handicapped Act of 1975 (20 U.S.C., Sections 1400 et seq.) specify requirements for state and local educational agencies to ensure the equitable participation of eligible handicapped children enrolled in nonpublic elementary and secondary schools when an eligible handicapped child is:

(1) Referred and placed in a nonpublic school by a state or local educational agency in order to receive a free appropriate public education; and

(2) Not referred or placed in a nonpublic school by a public education agency. [See Appendix B.]

Federal Requirements Relating to Children Placed in Nonpublic Schools by Public Agencies

Implementing regulations for PL 94-142 require that before a public agency refers or places a handicapped child in a nonpublic school or facility, it must:

- Initiate and conduct a meeting to develop an IEP for the pupil as if he or she were enrolled in a public school program.
- Insure that a representative of the nonpublic school attend the IEP meeting.
- Use other means to ensure the participation of the nonpublic school, which include individual or conference telephone calls.

After a handicapped child enters a nonpublic school, meetings to review and revise the child's individualized education program (IEP) may be initiated and conducted by the private school at the discretion of the public agency.

If the nonpublic school or agency initiates and conducts the IEP meeting, the local educational agency is responsible to ensure that the parents and a representative of the LEA attend the meeting.

Even if a nonpublic school or agency implements the pupil's IEP and has the delegated authority to review and revise the IEP, responsibility for the pupil and compliance rests with the contracting local educational agency. [34 CFR 300.347 et seq.]

Federal regulations further specify that the state ensure that a child placed in or referred to a nonpublic school or facility by a public agency:

(1) Is provided special education and related services according to an individualized education program at no cost to parents at a school or facility which meets the standards that apply to state and local education agencies; and

(2) Has all the rights of a handicapped child who is served by a public agency. [34 CFR 300.401]

In order to implement these requirements, the state educational agency is required to:

(a) Monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires;

(b) Disseminate copies of applicable standards to each nonpublic school and facility to which a public agency has referred or placed an exceptional pupil; and

(c) Provide an opportunity for those nonpublic schools and facilities to participate in the development and revision of state standards which apply to them. [34 CFR 300.402]

If an eligible pupil has available a free appropriate public education, as outlined by an IEP, and the parents choose to place a child in a nonpublic school or facility, the LEA is not required to pay for the child's education at the nonpublic school or facility. The LEA may, however, make services available to the pupil under procedures outlined in Appendix B.

Disagreements between a parent and an LEA regarding the availability of an appropriate program for the pupil, in addition to the question of financial responsibility, are subject to due process procedures outlined in federal and state implementing regulations.

State Statutory Role of California
Nonpublic, Nonsectarian School and Agency Services

Since prior to the implementation of the California Master Plan for Special Education in 1980, nonpublic special education school and agency service alternatives have served an integral role in California's efforts to meet the federal mandate of the Education of the Handicapped Act in providing eligible children with a free appropriate public education according to their individual needs.

Through enactment of the Master Plan for Special Education by Senate Bill 1870 (Rodda), Chapter 797-1980 Statutes, the role of nonpublic, nonsectarian special education school and agency programs serving exceptional pupils in California was specified in several provisions of Part 30 of the California Education Code. Some of the major provisions of state law relating to the role of NPS services include, but are not necessarily limited to, the following:

- Legislative intent which specifies that educational programs are coordinated with other public and private agencies, including preschools, child development programs, nonpublic nonsectarian schools, regional occupational centers and programs, postsecondary and adult programs for individuals with exceptional needs. [Section 56001(k)]

- Requirements for the Superintendent of Public Instruction to promote innovation and improvement in the field of special education at public and nonpublic, nonsectarian school, district, county, and state levels. [Section 56361(d)]

- Requirements which specify that each district, special education local plan area (SELPA), or county office ensure that a continuum of program options be available to meet the needs of exceptional individuals for special education and related services. Additionally, other provisions of that Section further specify that "Nonpublic, nonsectarian school services pursuant to Section 56365" are included in the continuum of program options which must be available to exceptional individuals. [Section 56361(d)]

- Legislative intent specifies that the role of the nonpublic, nonsectarian school be maintained and continued as an alternative special education service available to districts, special education local plan areas, county offices, and parents. [Section 56366]

- Requirements which specify that no contract for special education and related services provided by nonpublic, nonsectarian school or licensed children's institutions be authorized for state reimbursement unless such schools or institutions are certified by the California State Department of Education. [Section 56366(c)]

Since implementation of the Master Plan, the role of nonpublic special education school and agency programs has continued to focus on appropriately meeting the unique needs of students for whom there are no other appropriate public school programs available. Education Code requirements specify that nonpublic school and agency services must be provided under a contract with the district, special education local plan area, or county office to provide the appropriate special education facilities or services required by the exceptional individuals when no appropriate public education program is available. [Section 56365(a)]

Considering the needs of pupils who are enrolled in nonpublic school or agency programs to receive a free appropriate public education, several nonpublic school and agency programs are also approved and utilized by other state and local public noneducational agencies in California. Depending on the location of particular counties or regions in the state, several programs are concurrently approved to provide specific noneducational services with state and local departments of mental health, social services, probation services, health services, and developmental services.

In recognition of the specialized role of nonpublic school and agency programs in meeting the diverse needs of California exceptional individuals, the Legislature enacted later laws which further maintained such service options for appropriately serving exceptional pupils.

Some of the major legislative efforts include the following laws which specify a role for nonpublic special education school and agency services:

- In 1984, the Interagency Responsibilities for Providing Related Services to Handicapped Children Act was enacted into law as Chapter 26.5 of Title 1 of the Government Code. Among other provisions, this state law required that the Departments of Health Services and Mental Health provide such services as required by an Individualized Education Program (IEP) Team either directly or by contracting with another public agency, qualified individual, or state certified nonpublic, nonsectarian school or agency. [Government Code Sections 7575(c) and 7576]

- In 1985, the Early Intervention Services Act was enacted to direct the interagency coordination of services to handicapped and high risk youth by public and nonpublic schools and agencies. This state law also included requirements to maximize services by the coordination of existing early intervention services provided by state and local public and nonpublic schools and agencies. [Education Code Section 95002]

- In 1987, the preschool handicapped early education program was expanded in order to enable California to participate in the federal grant assistance program set forth by Title II of Public Law 99-457 in providing special education programs for children ages three through five. Among others, provisions of this state law specify that the appropriate setting for these services include a public or nonpublic, nonsectarian preschool program. [Education Code Section 56441.4] Later revisions to this law clarified funding mechanisms used in contracting appropriate nonpublic preschool services.

Other Requirements Concerning the Operations of California Nonpublic Schools

In addition to those requirements specified by Part 30 of the Education Code (commencing with Section 56000), nonpublic, nonsectarian schools which are certified by the State Department of Education to provide special education and related services to exceptional individuals are also required to comply with the following basic legal requirements for all California nonpublic elementary and secondary schools. These prerequisites include:

- **Annual Affidavit Required**

  The provisions of Education Code Section 48222 provide for the exemption of children from attending public schools "who are receiving instruction in a private, full-time day school by persons capable of teaching." The exemption under this Section are valid only after certification by the attendance supervisor of the local public school district that the private school has complied with the provisions of Education Code Section 33190, which requires that the private school owner or principal officer annually file a Private School Affidavit (Form R-4). Although the affidavit should not be construed as a license, it does verify the pupils' enrollment and allows the private school to receive appropriate pupil records from the last school of attendance.

The Private School Affidavit (Form R-4) can be obtained from, and is returned to, the office of the county superintendent of schools in which the nonpublic school is located. The county office of education forwards copies of the completed affidavit to the State Superintendent of Public Instruction and the local school district in which the nonpublic school is specifically located, and that office retains a copy for its records.

In addition to providing other prescribed information in the affidavit, the person signing the document certifies compliance with local ordinances governing health, safety, and fire codes.

The affidavit also specifies the location of pupil attendance records, the courses of study offered, and the names and addresses of the owners and administrators of the nonpublic school. For additional information about Required Courses of Study for Pupils Enrolled in Full-time California Private Day Schools see Appendix H. The nonpublic school's affidavit must be made available to the parents and guardians of all pupils enrolled in the school and to any parent or guardian considering enrollment of their child in a nonpublic school.

Information submitted by all California nonpublic schools are published in a *California Private School Directory* by the State Department of Education. For further information about the *Private School Directory*, inquiries should be directed to the Bureau of Publications, State Department of Education.

- **Personnel Employment Requirements for Nonpublic Schools**

The Private School Affidavit also includes a provision that the nonpublic school require each employee hired to work in a nonpublic school on or after July 1, 1985, on a regular paid full-time or regular paid part-time basis who will have contact with minor students and not possessing a valid state teaching credential to obtain a Criminal Record Summary from the Federal Bureau of Investigation and the State Department of Justice as a condition of employment. [Education Code Section 44237]

- **Licensure of Nonpublic Preschool Programs**

The State Department of Social Services, Community Care Licensing Division, is responsible for the licensure of all private nursery or nonpublic preschools within California. Any program for children under four years and nine months of age is designated a preschool program and must, therefore, be licensed. Provisions contained in the California Code of Regulations (CCR), Title 22, Division 2 contain the regulations for the licensure, evaluation, and employee qualifications for such programs. The requirements for appropriately qualified staff for the provision of special education and services are in addition to the CCR, Title 22 staff qualifications for preschools.

- **Nonpublic Extended Day Care**

  Extended day care programs must be licensed by the Community Care Licensing Division of the State Department of Social Services. Public and nonpublic schools which sponsor and staff an extended day care program before and/or after school for school-age children are exempt from licensure by the State Department of Social Services when all of the children receiving care and supervision are also enrolled as pupils at the school.

- **Health and Safety Reporting Requirements**

  Section 324.2 of the California Health and Safety Code requires that every private school which has children enrolled in first grade shall report by January 15 of each year to the Child Health and Disability Prevention (CHDP) Program the following information:

  (a) the total number of children enrolled in first grade;
  (b) the number of children who have had a health screening examination; and
  (c) the number of children who have signed a waiver of the health screening examination.

For further information, inquiries should be directed to the Child Health and Disability Prevention (CHDP) program located in the local county Department of Health offices.

- **Transfer of Permanent School Records**

  Education Code Section 49068 requires that whenever a pupil transfers from one school district to another or to a nonpublic school, or transfers from a nonpublic school to a school district within the state, the pupil's permanent record or copy must be transferred by the former district or nonpublic school upon request by the local district or nonpublic school in which the pupil is enrolled.

- **Licensure of Residential Components of Certain California Nonpublic Schools**

  Certain California nonpublic school programs include residential, nonmedical services. In those instances, the residential component of the program is subject to the licensure requirements of the Health and Safety Code and administered by the State Department of Social Services, Community Care Licensing Division. The Community Care Licensing Division is responsible for the licensure and auditing of foster family homes, group homes, and residential treatment centers in California.

  For residential programs serving developmentally disabled individuals, the residential program is subject to requirements established by vendoring regional centers.

Chapter II

Overview of State Certification Requirements for Nonpublic, Nonsectarian Schools and Agencies

The purpose of state certification requirements for nonpublic, nonsectarian special education school and agency programs is established by federal laws and regulations. In short, state certification of nonpublic school and agency services is intended to provide assurance that the program meets minimum state standards which are required of public school special education programs, as specified by PL 94-142.

In addition, state laws require state certification of a nonpublic, nonsectarian school, agency, or licensed children's institution in order for the contracting local school district or county office to be eligible for state reimbursement.

State laws also specify that the state certification of nonpublic, nonsectarian schools and agencies are subject to rules and regulations issued by the State Board of Education. The rules and regulations governing the state certification of nonpublic, nonsectarian schools and agencies are specified in Section 3064 of Title 5, California Code of Regulations (CCR) governing special education programs.

Procedures for Nonpublic School Certification

A private school desiring to obtain state certification as a nonpublic, nonsectarian school (NPS) must meet specific requirements and file an application with the State Superintendent of Public Instruction. An application packet is available from the Special Education Division of the California State Department of Education.

The State Department of Education will accept applications throughout the year from interested applicants. Although the Superintendent may issue a certificate to an applicant school or agency for up to five years, NPS programs are reviewed annually.

In pursuing state certification as a nonpublic, nonsectarian school, the school should follow certain suggested activities, which will help ensure that the establishment of the NPS program is smooth and timely:

- Prior to submitting an application for certification, the school owner or director should contact the appropriate city or county authorities to determine the applicable ordinances involving the business licensing, safety, law enforcement, and property use/zoning requirements which affect the operation of a private school.

- When contemplating the establishment of a private school and application for nonpublic school certification, it is recommended that the owner or director contact the local school district, county office of education, or special education local plan area (SELPA) to discuss his or her planned program.

- The application packet requires specific information about the school, such as a copy of the by-laws of the new school as a corporation or evidence of partnership or sole ownership.

- When filing an application for state certification, the applicant must attach a nonrefundable application fee in the form of a certified check, money order, or cashier's check made payable to the California State Department of Education. The application fees are determined by the number of pupils enrolled at each site.

Also included in the application packet is a Fire Safety Inspection Request (Form STD 850), which must be completed by the applicant. The Special Education Division processes all fire clearance inspection requests directly through the State Fire Marshall. The State Fire Marshall directs the local fire district to make an on-site inspection of the private school or facility, as needed.

Required Nonpublic School Operating Policies

The initial application of a nonpublic school should provide a comprehensive program plan for the school as follows:

- Admission and Discharge Procedures.

- Instructional Program Description, which includes the school program's mission, instructional goals and objectives, a written course of study designed to provide adequate credits for high school graduation, and a written instructional program evaluation policy and procedures.

- Pupil Reports and Records, which include written procedures for reporting pupil progress and ensuring the confidentiality of pupil records.

- School Personnel Policies, which include an administrative organization chart; written formal staff evaluation procedures; staff development activities and opportunities; personnel job descriptions; a list of all staff with their required licenses and credentials; and other personnel policies.

- Fiscal and Attendance Reports, which include policies and procedures for reporting pupil attendance and absences; preparation of the school program's annual operating budget; billing and invoicing procedures; and policies for other fiscal reports as may be required by other contracting public or private agencies; e.g., annual independent audits by certified public accounting firms.

- School Facility Description, which includes a written description of the school facilities, classrooms, and other activity areas; a map of the facility's street location; and a map or plot plan of the school's facilities. Policies for health, fire, and building safety inspections; seismic safety; and asbestos abatement, when applicable, are included.

On-Site Certification Reviews

On-site certification reviews of all nonpublic schools are conducted prior to the initial certification. The initial on-site visit for a new nonpublic school is scheduled once all documentation required by the application is complete.

The Special Education Division of the California State Department of Education contracts with independent on-site reviewers to coordinate and conduct on-site evaluation of the nonpublic school program. Occasionally, local public and nonpublic school personnel will be requested to assist in the on-site review because of the unique experiences and training that they may possess, which further enhances the effectiveness of the review.

The nonpublic school is always given prior notice before the on-site review visit. The person serving as the review team chairperson confers with the school administrator prior to the on-site review to discuss the procedures and the number of days that may be required to complete the review. The chairperson indicates the persons who will participate in the on-site review visit.

State regulations specify that the Superintendent will make a determination on each application for NPS certification within 120 days of the receipt of the application. The Superintendent will act on applications received by taking one of the following actions: [See Appendix H, Sample State Notice of Nonpublic School Certification.]

- "Approved" status generally means that the applicant has met all minimum standards for state certification for a period not exceeding five years and usually renewable each year.

- "Conditional" status generally means that the applicant has met all minimum standards but with some difficulty, delay, or dispute, which usually requires follow-up on-site visits to the program for a period not exceeding a year.

- "Denied" status means that the applicant has not been able or willing to meet all minimum standards for state certification. At the time of notifying the applicant of this action, the Superintendent must also state the reasons for the denial.

If one of these actions is not taken within 120 days of receipt of the application, the nonpublic school or agency is automatically given conditional certification for a period ending on August 31 of the current school year.

Renewal of Nonpublic School Certification

The California State Department of Education forwards application materials for the renewal of state certification to all nonpublic school programs each year. As with submitting an initial application for NPS state certification, application fees are required to be included with the application.

Suspension and Revocation of Nonpublic School Certification

The Superintendent of Public Instruction may also suspend or revoke NPS certification for the following reasons:

- Committing, aiding, abetting, or permitting the violation of any applicable state or federal rules and regulations of the Superintendent or the State Board of Education.
- Falsification or intentional misrepresentation of any elements of the application, pupil records, or programs presented for state certification purposes.
- Conduct in the operation of maintenance of the NPS which is harmful to the health, welfare, or safety of any student.
- Breach of contract when the NPS fails to comply with any component(s) agreed to in the contract between the nonpublic school and local district or county office.
- Failure to notify the Department of Education of changes in credentialed staff, ownership, management, and/or control of the NPS; major modification or relocation of facilities; or significant modification of the program presented for state certification.
- Failure to implement recommendations and compliance requirements subsequent to program reviews.
- Failure to provide appropriate services, supplies, equipment, or facilities for a pupil, as required and agreed in the individualized education program.
- Failure to notify the Superintendent within ten days of any revocation of any license or permit, such as residential care license, business license, or facility use permit.

Within 20 workdays following the nonpublic school's receipt of the notice of certification denial, revocation, or suspension, the nonpublic school may file a written petition, which may include a written argument and/or request to present an oral argument.

Within 30 workdays of the receipt of the written petition, the Superintendent or designee must review the decision and the applicant's petition in order to render a written reasoned decision, which shall be the final administrative decision. The designee of the Superintendent shall be impartial, unbiased, and shall not have participated in the Department's decision to revoke or suspend the nonpublic school certification.

Any public education agency which contracts with the certified nonpublic school may request the Superintendent to review the status of the NPS. Such requests must be in writing and a copy sent to the nonpublic school.

Procedures for Nonpublic Agency Certification

Procedures for the state certification of nonpublic, nonsectarian agencies are similar to those for nonpublic schools except that these providers do not provide a full school day of curricular services. Rather, nonpublic agencies are individuals, agencies, institutions, or organizations that provide related services authorized by the federal law and designated instruction and services authorized under California laws to exceptional pupils. These services include, but are not necessarily limited to, occupational therapy; language, speech, and hearing development and remediation; adapted physical education; physical and occupational therapy; counseling and guidance services, and others specified in the CCR, Title 5, Section 3051 et seq.

Since the majority of state certified NPA programs are individuals providing such services on public school sites, on-site facility inspections are limited to those nonpublic agencies or institutions which provide designated instruction and related services in free-standing private facilities.

For those desiring certification as a nonpublic agency, an application must be completed and a copy of the individual's applicable credentials or licenses for providing services through the proposed nonpublic agency must be attached.

While nonpublic schools are certified to provide for a full day of instruction, which includes special education and related services for exceptional students, a nonpublic agency is certified to provide specific services that may not be composed of a full school day of instruction needed by pupils.

When all required application materials and supporting documentation are complete, the Superintendent or designee issues one of the three previously described actions on the application. [See Appendix I, Sample State Notice of Nonpublic, Nonsectarian Agency Certification Status.]

Chapter III

Provisions for Contracting with Nonpublic, Nonsectarian Schools and Agencies

The principal statutory authority governing contracted services between California local educational agencies and nonpublic, nonsectarian special education schools and agencies is found in the provisions of Education Code Sections 56365 and 56366. Some of the major requirements affecting LEAs contracting with nonpublic, nonsectarian special education schools and agencies that are found in these provisions follow:

- Included with the contract should be the authorization, through state certification, for LEAs to use contracted nonpublic, nonsectarian school or agency services when no appropriate public education program is available to meet the individual needs of exceptional pupils enrolled by the local educational agency.

- Eligibility requirements for LEAs to receive state reimbursement for special education and related services provided to exceptional students through the NPS/NPA contract.

- Requirements that local educational agencies pay to the nonpublic school, in accordance with the contract, the full amount of the tuition for exceptional pupils enrolled in programs provided by nonpublic, nonsectarian schools and agencies through the contract.

- Requirements that no contract for special education and related services provided by nonpublic schools or licensed children's institutions (LCI) will be authorized unless the school or institution has been certified as meeting those standards related to the required special education services and facilities for exceptional pupils in the public schools.

- Procedures and timelines for mediating contract negotiation disputes with either the county superintendent or State Superintendent of Public Instruction.

- Procedures and timelines for local education agencies to make timely payments to nonpublic, nonsectarian schools and agencies that have been contracted for services.

- Authorization for a state waiver of NPS/NPA certification or contract requirements governing nonpublic, nonsectarian schools and agencies under unique and extraordinary circumstances.

Additional guidance is also provided under the provisions of Section 3066 of Title 5, California Code of Regulations (CCR), Governing Special Education Programs, relating to Determining Appropriate Nonpublic School or Nonpublic Agency Services.

Contracting for Appropriate Services

It should be noted that both federal and state laws governing special education programs provided to eligible students allow for contracting with state certified nonpublic school and agency programs. California statutes further require that school districts, county offices of education, and special education local plan areas make every effort to appropriately serve such children in public school programs before making such placements in a state certified nonpublic, nonsectarian school or agency. An Individualized Education Plan (IEP) Team may, however, determine that there are no other appropriate public education programs available to meet the pupil's needs. If the child's parents or guardians are in agreement, the responsible LEA must then make placement in a state certified nonpublic, nonsectarian school or agency which is appropriate to the pupil's needs and is able to implement the pupil's IEP, which authorizes the NPS or NPA contract services.

Consistent with state law and regulations, the contract must include, but is not necessarily limited to, the following requirements:

- General provisions relating to contract modifications, waivers, contract disputes, subcontracts and assignments, independent contractor status, conflicts of interest, contract termination procedures, procedures for the inspection of records and audits, compliance with applicable state and federal laws and regulations, attendance accounting and record-keeping, and other progress reporting requirements.

- Contract payment provisions and schedules.

- Indemnification and reasonable insurance requirements.

- Procedures and fiscal responsibilities for reporting attendance and excused or unexcused absences.

In many cases, an NPS or NPA may be providing special education and services to several pupils, through a contract with an LEA, who are referred and placed in the NPS or NPA program throughout the school year. In those instances, it is recommended that a Master Contract Agreement, which includes all of the above provisions, be established between the NPS or NPA and the local educational agency.

Once the Master Contract Agreement establishes the general terms and provisions between the LEA and the NPS or NPA, the contract placement process can be streamlined to focus largely on the services needed, their frequency and duration, and the specific costs of such services, which is contained in an Individual Services Contract for each pupil. The Individual Services Contract enables the LEA and NPS or NPA to make appropriate placement in a timely manner and with a minimum of administrative burden. Suggested samples of the Master Contract and Individual Services Contract are provided in Appendixes C and D, respectively.

Chapter IV provides further information about the development of the NPS or NPA Master Contract and Individual Services Contract

Placing Children in Special Facilities

The state laws governing licensed children's institutions (LCIs) when a special education student is placed by a court, a regional center for the developmentally disabled, or public agency other than an education agency are found in Article 5 of Part 30 of the Education Code beginning with Section 56155. LCIs are defined as being a residential facility which is licensed by the state or other designated agency to provide nonmedical care to children and include the following:

- *Group homes* which serve six or more children are defined by Section 80001(a) of Title 22 of the California Code of Regulations (CCR).

- *Foster family homes* which serve not more than six foster children, including exceptional pupils, and include *small family homes* defined by subdivision (a) of Section 1502 of the Health and Safety Code.

In Section 56157 of the Education Code are more specific provisions relating to procedures for a nonpublic, nonsectarian school placement when the exceptional pupil resides in a licensed children's institution in which the NPS is also located.

While Education Code Section 56157 addresses more specifically the added circumstances or procedures which LEAs must follow in the determination of the LCI/nonpublic school program being appropriate for each eligible pupil, Sections 56365 and 56366 remain the controlling statutory provisions for such placements' applicable contract negotiation procedures.

In some instances, certain eligible children may require the provision of special education in conjunction with treatment received in a hospital or other health facility. Assuming that the child cannot leave the hospital grounds, there are two ways that the pupil can receive appropriate educational services:

- Under Education Code Section 56157, the LEA in which the hospital or medical facility is located is responsible for providing the instruction.

- Under Education Code Section 56168, if the hospital or medical facility also operates a nonpublic school program, the local education agency in which the parent of the pupil resides may determine, through the IEP process, that the NPS program is appropriate. If this occurs, the district of residence contracts with the nonpublic school program and remains fiscally responsible for the pupil.

If the former option is followed, it is the district in which the hospital or medical facility is located that is fiscally responsible for the pupil. In no event is placement in a hospital considered an educationally necessary placement, as defined by the federal requirements of 34 CFR 300.302.

Specific provisions for contracting with private, nonprofit preschools or child development centers to provide special education and related services to infant and preschool age exceptional individuals are contained in Education Code Section 56431. The Superintendent

of Public Instruction is required to develop procedures and criteria for districts, SELPAs, and county offices of education to use in contracting for the provision of such services.

When local education agencies contract with a state certified nonpublic school or agency program to provide a free appropriate public education to eligible students, the nonpublic school or agency program is considered, in many respects, an extension of the public schools. Students who are placed through a contract with a local educational agency are "deemed students enrolled in public schools" [Education Code Section 56366] and receive state average daily attendance (a.d.a.) credits, which are included in the LEA's state reimbursement for the NPS or NPA contract placement costs.

Throughout the nonpublic school placement, these students are entitled to the same rights and procedural safeguards as are provided to those pupils whose IEPs are implemented in a public school program.

Establishing Special Education Eligibility and Placement

Given the identification of pupils' eligibility for special education, public schools must ensure that appropriate modifications have been made to the regular educational program before considering students for referral and assessment to determine their exceptional needs. The local district in which a student resides is responsible for conducting assessments on all students referred as potentially in need of special education and related services.

At any time, a pupil's parents or guardians or teacher may refer a child suspected of having a handicapping condition for assessment of eligibility for special education and related services. Once the referral to special education is made and the parents' consent is received, the local educational agency begins the assessment process.

The child is assessed in all areas related to the suspected disability. The severity and complexity of the handicapping condition is determined by a multidisciplinary team of professionals, which may include:

- Language and speech specialist
- Special education teacher
- School nurse
- School psychologist
- Adapted physical education specialists
- Audiologists
- Other professionals, as appropriate

The assessment is required to be completed within 50 days of receiving the parents' consent. The parents may submit any recent evaluations done by qualified professionals.

The child's school history is examined to determine past educational progress, the steps taken to help the child in areas of difficulty, and the results of such assistance. The interaction between the teacher and classmates with the child is also studied. Cultural and language differences which affect school performance may also be considered.

Determining Appropriate Options

When the assessment and related reports have been completed, the parents are given written notice of an IEP Team conference to discuss the results of the assessment, the educational recommendations, and the reasons for these recommendations.

Upon reviewing the assessment results, the IEP Team will make final determination of the student's eligibility for special education and make recommendations for the appropriate placement of the student. The IEP Team may recommend placement in one of the service options contained in the continuum of special education program options authorized by law. These may include, but are not necessarily limited to:

- Continued Regular Education Placement
- Designated Instruction and Services (DIS)
- Resource Specialist Program (RSP)
- Special Day Class or Center (SCC)
- Nonpublic, Nonsectarian School or Agency (NPS/NPA)
- State Special Schools

California statutes and regulations require that school districts, county offices of education, and special education local plan areas make every effort to appropriately serve such children in public school programs before making placement in a state certified nonpublic, nonsectarian school or agency to receive special education and related services.

When there is documentable evidence that other public school options have been considered and determined to be inappropriate, a state certified NPS or NPA located in the state must be considered before those located outside the state. Programs located outside the state may also be certified by the California State Department of Education to serve eligible pupils.

Reviewing Appropriate NPS or NPA Program Options

When a pupil's need for a nonpublic school or agency placement is reviewed, the IEP goals and objectives for special education and related services are used as a primary reference guide in considering one or more comparably appropriate NPS or NPA placement options. Only state certified nonpublic, nonsectarian school and agency programs which meet minimum state standards can be considered.

The availability of appropriately credentialed, licensed or other qualified personnel to provide the appropriate special education instruction and related services must be assured. The availability of specific related services required by the student—e.g., vocational education and training—is also to be considered.

When a district places preschool age pupils in NPS settings because it does not have appropriate programs, it is important to consider ways of creating a mainstreamed or

integrated program to the extent possible for the individuals involved. Special education services may be provided in the following settings:

- o Regular public or private nonsectarian preschool programs
- o Child development center or family day care home
- o The child's regular environment, which may include the home
- o Special site where preschool programs for both handicapped and nonhandicapped children are located close to each other
- o Special education preschool program with nonhandicapped children
- o Public school setting which provides an age-appropriate environment, materials, and services.

Assuming that two or more comparable NPS or NPA programs with equally appropriate placement options are being considered, the location of the program closest to home and its ability to provide opportunities of interaction with nonhandicapped students must also be considered. The less costly of comparably appropriate nonpublic school or agency options is also considered when determining the final placement of a child in an NPS or NPA program.

It is also important that the appropriate nonpublic school or agency program employs agency policies and procedures which ensure nondiscrimination of all exceptional individuals served. Such policies and procedures include, but are not necessarily limited to, the referral, admission, and discharge procedures of exceptional pupils served.

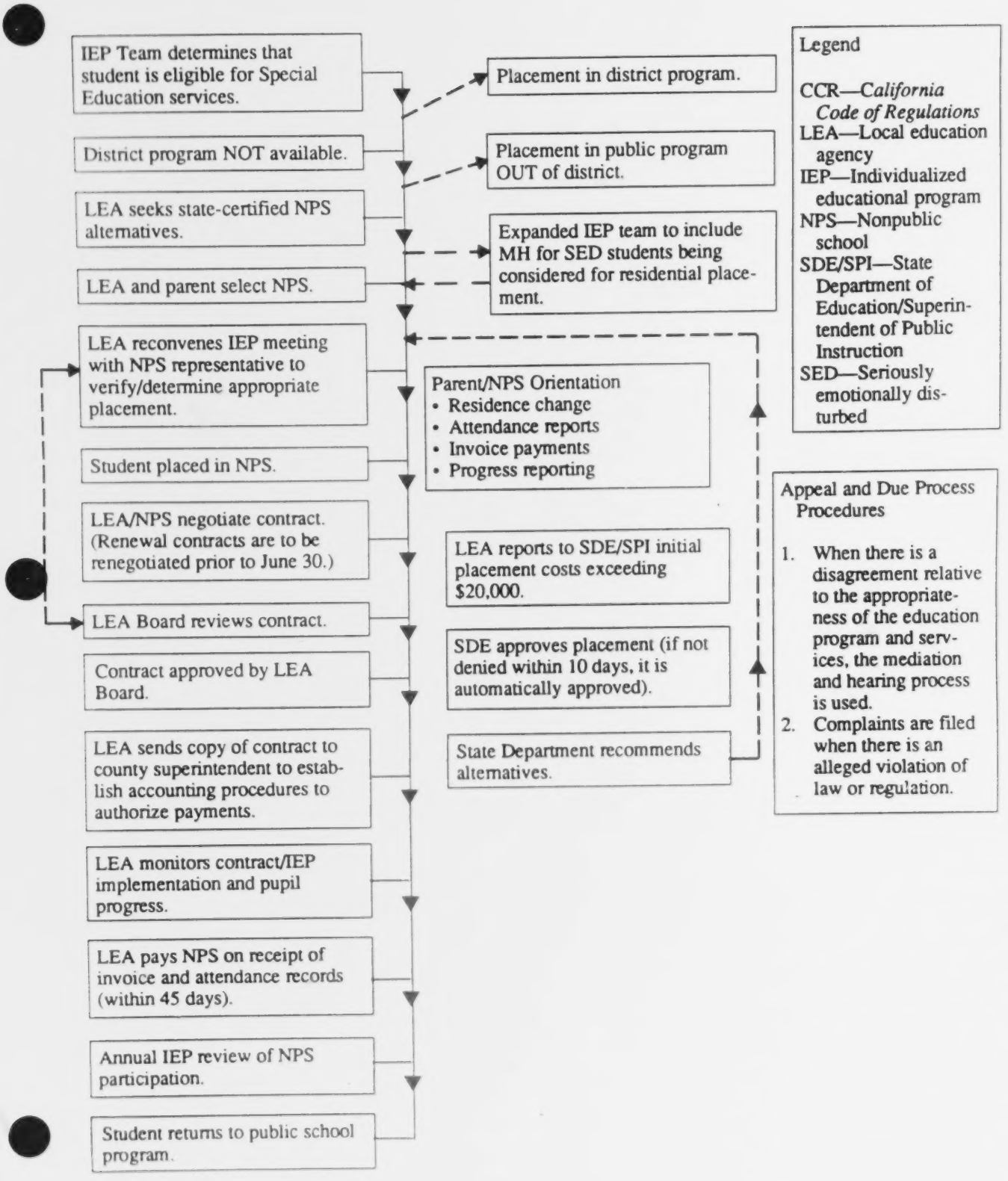
Chart A is provided to outline the major steps involved in an LEA's consideration of NPS or NPA options leading to placement.

Involving Parents in the Process

Throughout the IEP development process, parents serve an essential role in reviewing and determining an appropriate nonpublic school or agency program option. Besides their agreement with the IEP Team's determination of what is appropriate, the parents must be able to work with the staff of the appropriate NPS or NPA program once their child is enrolled.

As members of the IEP Team, parents should be consulted early in the process of reviewing appropriate NPS or NPA program options. They should be encouraged to meet with the appropriate nonpublic school or agency staff and visit the facilities before the actual placement decisions are made.

Chart A
NPS/Agency Placement Process


IEP Team determines that student is eligible for Special Education services.
District program NOT available.
LEA seeks state-certified NPS alternatives.
LEA and parent select NPS.
LEA reconvenes IEP meeting with NPS representative to verify/determine appropriate placement.
Student placed in NPS.
LEA/NPS negotiate contract. (Renewal contracts are to be renegotiated prior to June 30.)
LEA Board reviews contract.
Contract approved by LEA Board.
LEA sends copy of contract to county superintendent to establish accounting procedures to authorize payments.
LEA monitors contract/IEP implementation and pupil progress.
LEA pays NPS on receipt of invoice and attendance records (within 45 days).
Annual IEP review of NPS participation.
Student returns to public school program.
Placement in district program.
Placement in public program OUT of district.
Expanded IEP team to include MH for SED students being considered for residential placement.
Parent/NPS Orientation
• Residence change
• Attendance reports
• Invoice payments
• Progress reporting
LEA reports to SDE/SPI initial placement costs exceeding $20,000.
SDE approves placement (if not denied within 10 days, it is automatically approved).
State Department recommends alternatives.
Legend
CCR—California Code of Regulations
LEA—Local education agency
IEP—Individualized educational program
NPS—Nonpublic school
SDE/SPI—State Department of Education/Superintendent of Public Instruction
SED—Seriously emotionally disturbed
Appeal and Due Process Procedures
1. When there is a disagreement relative to the appropriateness of the education program and services, the mediation and hearing process is used.
2. Complaints are filed when there is an alleged violation of law or regulation.

Parents should also be encouraged to participate in discussions about their child's extracurricular interests and abilities, which could be met through certain nonpublic school or agency placement options.

The final decision for the appropriate placement of exceptional students rests with the IEP Team. Appropriate placement decisions are made once the IEP goals and objectives are specifically written and agreed to by the parents or guardians, based on their child's individual needs. It is the LEA's responsibility to determine administratively the specific site location for services once the IEP Team has determined the need for NPS or NPA placement. In addition, the IEP Team and LEA must consider the distance of the pupil's classroom or school assignment from the child's home or the public school he or she would normally attend if it were determined that the child was ineligible for special education.

In order to avoid difficulties in the timely implementation of the child's IEP, the IEP Team and LEA should consider the space availability of the appropriate nonpublic school or agency program and acceptance from the NPS or NPA for enrollment when finalizing the placement.

As with preplacement considerations, parents serve an essential role in ensuring a smooth and timely placement of their child in an appropriate nonpublic school or agency program. Therefore, it is essential that the parents agree to the operating policies and procedures employed by a prospective nonpublic school or agency program. In some cases, NPS or NPA programs require a minimum amount of parent or family counseling to be provided in conjunction with the special education and related services they provide. Some nonpublic schools or agencies may offer opportunities for parents to participate in family support group meetings, effective parenting classes, or other opportunities which may be optional and yet helpful in meeting the parents' needs.

LEAs that are contracting for services should ensure that all NPS service charges directly or indirectly involved in a pupil's IEP placement in the program are known prior to their negotiating the final contract. If there is disagreement between the parents and the nonpublic school program, the local education agency is responsible for exploring other appropriate program options on behalf of the parents.

Parents also need to be informed about their obligation to inform both the contracted nonpublic school or agency and the contracting school district, county office of education, or special education local plan area if they change residences during the school year or term of placement.

When parents have a complaint about either the nonpublic school or agency program or the local education agency's compliance with the law, the parents should be encouraged to resolve their concerns with both the NPS or NPA and the local educational agency. If resolution cannot be reached, the parent may submit a formal complaint to the State Department of Education for mediation and resolution. Similarly, when either a nonpublic school or agency program or a local educational agency has concerns with a parent(s) of an exceptional pupil, the parent should be consulted and resolution sought amicably.

Involving the NPS/NPA Early in the Process

The role of the nonpublic school's or agency's professionals in determining an exceptional pupil's appropriate placement depends on their role in the initial referral and assessment process for determining the child's eligibility for special education. When the NPS or NPA has been directly involved in a child's prior placement or in conducting specific evaluations which had been considered by an IEP Team, the nonpublic school or agency will have often gathered significant amounts of data about a child's needs which should be considered in determining an appropriate placement.

If a nonpublic school or agency program is being considered without its prior involvement, a representative of the NPS or NPA should be consulted to confirm the school's or agency's ability to provide the services identified in the pupil's IEP and to meet the needs of the pupil.

The nonpublic school or agency program can provide substantial information regarding the NPS or NPA program to assist a local educational agency and the IEP Team to determine the appropriate placement for a specific pupil. However, it is the LEA's responsibility to determine the actual placement that is appropriate to each exceptional pupil's needs.

Federal requirements are clear in that before a local educational agency refers or places a child in a nonpublic school, it must initiate and conduct an IEP meeting and ensure participation of the appropriate NPS or NPA. This includes individual and conference telephone calls if necessary. These requirements also state that, once a pupil is placed in an NPS or NPA, "meetings to review and revise the child's Individualized Education Program may be initiated and conducted" by the nonpublic school at the discretion of the local educational agency. [34 CFR 300.347]

Examining Special Circumstances of NPS/NPA Placement

Other Public Agency Involvement

In 1984 the Interagency Responsibilities for Providing Related Services to Handicapped Children Act was enacted with the passage of Assembly Bill 3632 and amended the following year by Assembly Bill 882; the provisions of the bills appear in Section 26.5 of Title 1 of the Government Code. These provisions include requirements that the Departments of Mental Health and Health Services provide related services, as required by an "expanded IEP Team," either directly or by contracting with another public agency, qualified individual, or a state certified nonpublic nonsectarian school or agency. [Government Code Sections 7575(c) and 7576] Final regulations to implement Section 26.5 of the Government Code are pending issuance by the affected state agencies.

Dual Enrollment in Public and Nonpublic School Programs

When an exceptional pupil who is placed in an NPS or NPA program has made sufficient progress to the point where it is believed that his or her return to a public school program should be planned, concurrent dual enrollment in a public and NPS or NPA program is often an effective way to transition students into the public program. The necessary con-

tracts related to dual enrollment are negotiated between the LEA and the nonpublic school or agency, as necessary.

Unilateral NPS/NPA Placements by Parents

Federal requirements specify that, "If a handicapped child has available a free appropriate public education and the parent chooses to place the child in a private school or facility, the public agency is not required by this part to pay for the child's education at the nonpublic school or agency." [34 CFR 300.403] Such placement decisions made solely by a parent without first consulting with the LEA are considered "unilateral placements."

Federal requirements also specify that disagreements between a parent and a public agency regarding the availability of a program appropriate for the child and the question of financial responsibility are subject to due process procedural safeguards established by federal and state laws and regulations.

Parents' Change of Residence

The parents are responsible for providing notice of a change in residence to both the former and new public school district and the contracted nonpublic school or agency currently implementing the student's IEP. Failure on the part of the parents to provide timely notice of a change in residence may result in the parents' being held responsible for the contract costs of their child's placement.

The contracted nonpublic school or agency is also required, on receiving such notice from the parents, to immediately notify the superintendent of the public educational agencies in both the former and new local district in which the parents' residence is located.

The former local educational agency is required to notify the new LEA of the exceptional pupil's change of residence and the pupil's IEP and other related school records, including the contract for services currently provided by the nonpublic school or agency. Within 15 days of receiving this information, the receiving LEA must complete its review of the pupil's IEP and the NPS or NPA contract in meeting the pupil's needs.

The new public school agency may make an interim placement if it believes it has a comparable public school program that it believes can meet the pupil's needs for services, as identified by his or her IEP; or the public school agency may allow the pupil to remain at the nonpublic school or agency during the time necessary to complete the review of the pupil's individualized education program. [Section 3067, CCR Title 5 Regulations]

Waivers That Apply to Services

There are two types of waivers which apply to services provided by state certified nonpublic, nonsectarian schools and agencies. One relates to the waiver of requirements pertaining to the appropriate use of substitute teachers. As outlined by Section 56061 of the Education Code, an NPS or NPA must submit an application to the State Department of Education for the Superintendent's approval when their services need to be extended beyond the 20 cumulative school day limit.

The other waiver relates to the authority of the State Superintendent of Public Instruction to waive one or more of the requirements governing nonpublic, nonsectarian school and agency services, as described by Section 56366.1 of the Education Code, through a petition filed by a district, special education local plan area, county office of education, nonpublic nonsectarian school or agency, or licensed children's institution.

This petition is completed by the local educational agency or nonpublic school or agency with reasons stated for the request. The petition must include sufficient documentation to demonstrate that (1) the waiver is necessary or beneficial to the content and implementation of the pupil's IEP (2) the waiver does not abrogate any rights provided to exceptional individuals and their parents or guardians under state and federal law; and (3) does not hinder the compliance of the district, special education local plan area, or county office of education. [Education Code Section 56366.1] A sample of the Justification to Accompany Request for Waiver of Nonpublic Schools/Agencies Certification Requirements is found in Appendix J.

Expulsion Procedures

Based on federal court decisions and related legal advisories issued by the State Department of Education, a special education pupil cannot be expelled for misconduct without determining whether the behavior is a manifestation of the pupil's disability or the result of an inappropriate placement. This determination can be made only by the pupil's IEP Team.

Chapter IV

Nonpublic School/Agency Contract Procedures

In addition to those program provisions outlined in Education Code Sections 56365 through 56366.5, the basic requirements for contracting with a nonpublic school or agency to provide special education and related services for exceptional pupils are specified in Section 56366 and include, but are not necessarily limited to:

- General provisions relating to contract modifications, waivers, disputes, subcontracts and assignments, independent contractor status, conflicts of interest, contract termination, inspection of records and audits, compliance with applicable state and federal laws and regulations, attendance accounting and recordkeeping, and other reporting requirements.
- Contract payment provisions and schedules.
- Indemnification and reasonable insurance requirements.
- Procedures and fiscal responsibilities for attendance accounting and reporting and verifying unexcused absences.
- Contract term being commensurate with the length of time for which nonpublic services are specified in the pupil's IEP.
- Changes made in the contracted educational instruction, services, or placement on the basis of revisions in the pupil's IEP.

Often, an LEA may place several pupils in a nonpublic school or agency throughout the year. In those instances, it is recommended that a Master Contract Agreement with the nonpublic school or agency be executed to ensure that all general provisions for the placement of pupils are established between the contracting LEA and the nonpublic school or agency. The LEA should also include with the Master Contract a copy of the status of the NPS/NPA's current state certification.

Once the general terms and provisions of the contracted placement for all pupils referred and placed by the LEA in the NPS or NPA are established, an Individual Services Contract is executed to specify the special education instruction and related services which must be provided to each pupil, as outlined by his or her written individualized education program (IEP).

Chart B is an outline of the specific components involved in the development of a contract between a local education agency and a state certified nonpublic, nonsectarian school or agency to provide special education and related services to exceptional individuals who are referred and placed by an LEA. Suggested samples of the Master Contract and Individual Services Contract are provided in Appendixes C and D, respectively.

Chart B
Sample NPS/Agency Contracting Procedures

District determines need for NPS/Agency.

↓

District verifies that NPS/Agency is certified by the State Department of Education.
1. Ask for a copy of the certification.
   or
2. Confirm the certification with the State Department of Education, Special Education Division.

↓

District program administrator negotiates contract.
1. Master Contract; and
2. Individual Service Contract negotiated for each student.

(Model Contracts for district use are provided on request from the State Department of Education, Special Education Division.)

↓

Local board approval

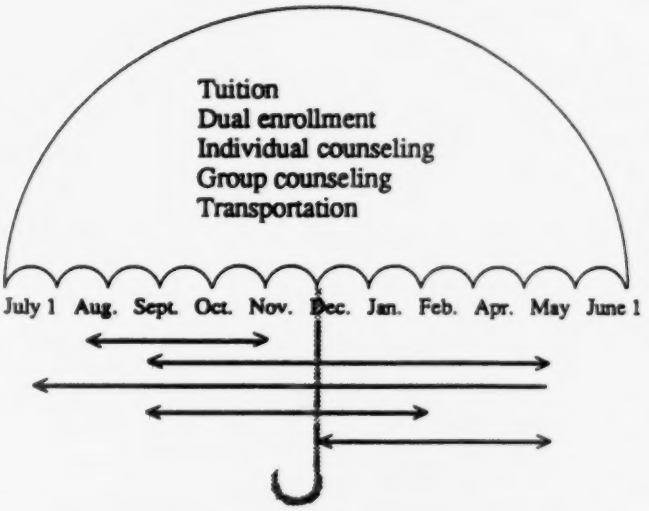
↓

Contract is forwarded to the county office.
1. Special Education Unit Review
   a. Verification of certification
   b. Verification of local board approval
2. School Financial Services Disbursements
   a. Establish a district file.
   b. Receive district warrants.
   c. Return approved warrants to district.

↓

Master Contract Renewal
1. Master Contracts are to be renegotiated prior to June 30 of each year for the new year (CCR 3066(a)).

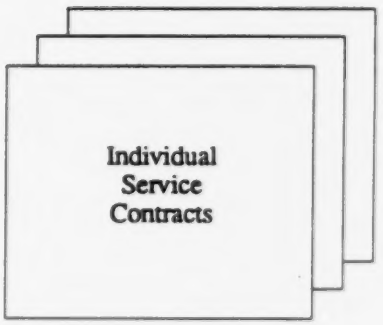
Master Nonpublic School/Agency Contracts



Agency certification expires each June 30th.

School certified maximum five years.

Nonpublic is a specific term referring to private schools and agencies that are state certified to provide services to special education students.



Review of Placement Costs

Education Code Section 56342 requires that, "Prior to recommending a new placement in a nonpublic, nonsectarian school, the individualized education program team shall submit the proposed recommendation to the local governing board of the district, special education local plan area, or county office for its review and recommendation regarding the cost of such placement."

The local board must complete its review and make recommendations regarding the proposed NPS or NPA placement costs, if any, at its next regular meeting. Parents or their representative are entitled to appear before the board and submit any written and oral evidence regarding the need for nonpublic school placement for their child. Any recommendations of the board must also be considered at an IEP Team meeting to be held within five days following the board's review.

A 50-day total timeline is allowed to complete the development of a pupil's individualized education program, which includes assessments for special education eligibility and placement. The time limit for development of the IEP may be waived for a period not to exceed an additional 15 days to permit the local board to meet its review and recommendation requirements.

Contract Disputes, Mediation, and Timeline

Requirements and procedures for resolving nonpublic school and agency contract disputes, mediation, and the timeline for resolution are contained in Education Code Section 56366(b). This section requires that if a pupil is enrolled before the NPS or NPA reach agreement on a contract with a district, special education local plan area, or county office, the public education agency is required to issue a warrant for an amount equal to the number of creditable days of attendance at the per diem rate agreed to prior to the enrollment of the pupil. This provision is allowed for 90 days during which time the contract shall be consummated.

If after 60 days the contract has not been finalized, either party may appeal to either the county superintendent to negotiate the contract if the county is not participating in the local plan involved in the NPS/NPA dispute; otherwise, to the State Superintendent, to negotiate the contract. Within 30 days of the receipt of this appeal, the county superintendent or the State Superintendent, or their designees, as applicable, "shall mediate the formulation of a contract which shall be binding upon both parties."

Ongoing Responsibilities for Nonpublic Schools and Agencies

Contracted nonpublic schools and agencies share responsibility with public education agencies for ensuring that the special education instruction and related services provided are in conformance with federal and state legal requirements protecting exceptional pupils' right to a free appropriate public education. They are encouraged to conduct self-reviews and monitor services provided to ensure their conformance to each pupil's IEP.

Contracted nonpublic schools and agencies are also held responsible to the specific provisions of Master Contracts and Individual Services Agreements for the contracted services they provide.

It is essential that administrative requirements, such as the current status of staff credentials and licenses or adequate insurance coverages, be continually monitored by the nonpublic school or agency.

The following are basic areas of on-going responsibilities of NPS or NPA programs that are contracted to provide special education instruction and related services:

- Pupil expulsion and suspension procedures
- Change of residence notification procedures
- Change of NPS/NPA placement transition and mainstreaming procedures
- Written pupil progress evaluations and reports
- Procedures for transferring and awarding high school course credit
- Procedures for high school graduation and pupil proficiency evaluations
- Pupil behavior management procedures
- Procedures for evaluating the appropriateness of curriculum, instructional materials and equipment, staff development and training, and so forth
- Procedures of how to resolve contract disputes with LEAs
- Confidentiality of pupil records

Nonpublic schools and agencies must ensure that timely notification of any changes in the program, personnel, facilities and clearances, staff licenses and credentials, or the pupil's residence is given to contracting LEAs. Each of these and other responsibilities which contracted nonpublic schools and agencies assume by their provision of a free appropriate publicly provided education to exceptional pupils ensure compliance to law and the effective provision of necessary services.

Ongoing Responsibilities of LEAs

Districts, county offices, and SELPAs contracting with nonpublic schools and agencies have ongoing responsibilities to ensure that services are provided in conformance with state and federal laws regarding a free appropriate public education for all exceptional individuals.

Contracting local educational agencies must verify the current state certification status of the NPS or NPA program providing special education and related services to exceptional pupils whom the LEAs have placed. The contracting local educational agency is ultimately responsible for the provision of an appropriate education even when such services are provided through a contract with a state certified nonpublic school or agency. Therefore, the local educational agency must monitor IEP services which are provided to pupils who are contractually placed in the NPS or NPA program. The contracting LEA has the responsibility for regularly monitoring the progress of each pupil placed by a contract in a state certified nonpublic school or agency program.

Nonpublic schools may be monitored by the state and contracting local education agencies at any time and without prior notice when there is reason to believe that there is an im-

mediate danger to the health, safety, or welfare of a child or group of children. State regulations require that the Superintendent must document the concern and submit it to the nonpublic school at the time of the on-site monitoring visit. The State Superintendent is also required to request a written response to any noncompliance or deficiency found at the time of the on-site monitoring visit.

Contracting local public school agencies must also coordinate the procedures required of nonpublic schools and agencies, as outlined in law and Master Contracts which include, but are not necessarily limited to:

- Pupil expulsion and suspension procedures
- Change of pupil residence notification procedures
- Change of NPS/NPA placement and mainstreaming transition procedures
- Written pupil progress evaluations and reports
- Procedures for transferring or awarding high school course credit
- Procedures for high school graduation and pupil proficiency evaluations
- Procedures for transfer of records and confidentiality
- Procedures for accurate attendance accounting and timely billings
- Confidentiality of pupil records

Each year, the contracting local public educational agency is responsible for an annual review of each contracted pupil's individualized education program. Pupil observations, evaluations, and progress reports conducted by the nonpublic school or agency should be considered in the annual IEP meetings held for each contracted exceptional individual.

When an exceptional pupil is determined to require interagency services provided under Section 26.5 of the Government Code, which involves the coordination of residential, mental health, and special education instruction, the local educational agency must coordinate such arrangements with the other affected public agencies, the nonpublic school or agency, and the parent.

If the child is a dependent of the court or if the natural parent(s) cannot, after reasonable effort, be located and identified as having "educational responsibility" for the child, the local educational agency is responsible for assigning a surrogate parent to act in the interests of the pupil. The local educational agency is required to select a surrogate parent according to the following criteria:

- The individual has no interest that conflicts with the interests of the child he or she represents.
- The individual has knowledge and skills that ensure adequate representation of the child.
- The individual assigned may not be an employee of a public agency which is involved in the education or care of the child.

Surrogate parents have all the rights in making educational decisions on behalf of the child that would be available to the pupil's natural parents.

In some cases exceptional pupils are dependents of juvenile courts or regional centers. New state legislation is pending to clarify surrogate parents' provisions and potential conflicts of interest which may exist when a noneducational agency is designated as the legal guardian or custodian of the exceptional individual.

When an IEP Team believes that an exceptional pupil requires mental health services to benefit from special education, the local county mental health department may either provide such services directly or contract with another public agency, qualified individual, or a state certified nonpublic, nonsectarian school or agency.

When an "expanded IEP Team" determines that an exceptional pupil requires out-of-home residential services in order to benefit from special education, the local county welfare department will be able to pay only for residential service-providers and facilities when a rate is set by the State Department of Social Services, Assistance to Families of Dependent Children (AFDC) Program. When appropriate, residential providers who have been approved and recognized as vendors by a regional center may also be contracted to serve developmentally disabled individuals.

Final regulations for implementation of interagency services to exceptional individuals under Section 26.5 of the Government Code are pending issuance by the State Department of Education and other affected state agencies.

When an IEP Team determines that a preschool-age exceptional pupil requires an NPS or NPA program, the LEA must first determine whether the pupil is considered to need "intensive special education and services," as defined by the State Board of Education [Education Code Section 56026(c)(2)]. Pupils identified as having nonintensive needs for special education and services will have their programs funded through the instructional personnel services units (IPSUs) received for their preschool program rather than through the state reimbursement provided to LEAs for NPS or NPA placements.

Although the contract procedures for pupils in nonpublic preschools remain similar to those for other pupils enrolled in a nonpublic school, it is necessary to determine whether the nonpublic preschool program can provide the required services of the pupil's IEP at the cost of the local education agency's IPSUs. Further clarification of nonpublic preschool program contract procedures are pending.

Chapter V

Funding Provisions for Contracting Nonpublic School and Agency Services

The basic funding provisions for contracting with state certified nonpublic, nonsectarian schools and agencies are specified in state laws, and they include, but are not necessarily limited to, the following:

- Requirements that districts, county offices, and SELPAs contract with state certified nonpublic school and agency programs as a condition of receiving state reimbursement for a portion of the NPS or NPA tuition.

- Requirements that local public educational agencies contracting for services pay to the nonpublic school the full amount of tuition for exceptional pupils enrolled in programs provided by the NPS or NPA through the contract.

- Provisions that pupils placed by a contract in nonpublic school or agency programs be considered enrolled in the public schools for purposes of generating basic units of a.d.a. aid for the pupil's education.

- Provisions for the state reimbursement of the costs of services provided by nonpublic school or agency programs when the contracting local educational agency receives at least 70 percent of the excess costs of the nonpublic school or agency tuition.

- Provisions for the state reimbursement of the costs of services provided by a nonpublic school or agency serving pupils who reside in licensed children's institutions, foster family homes, hospitals, and other similar medical facilities.

- Provisions for state funding of assessment provided to exceptional pupils who reside in licensed children's institutions, foster family homes, hospitals, and other similar medical facilities.

Fiscal reporting of contracted nonpublic school and agency costs are required of contracting local districts, county offices, and SELPAs. The following sections are intended to provide information on specific procedures and requirements which should be addressed by both LEA and NPS/NPA personnel.

NPS/NPA Attendance Accounting and Billing

The nonpublic school or agency is required to keep accurate attendance accounting records of exceptional pupils placed in their programs, according to procedures outlined in the State School Register. This includes accurate recording of absences, illness, and holidays, with original documentation of telephone contacts and parental notes. The NPS or NPA cannot claim attendance when the pupil is suspended, expelled, or otherwise not in attendance without an excused absence, as defined by Education Code Section 46010. A suggested sample Register of Daily Attendance is provided in Appendix F.

In preparing an invoice and Register of Daily Attendance, the NPS or NPA must report on the basis of a calendar month unless otherwise stipulated by the LEA in the contract. Creditable days of attendance are actual days of attendance or excused absences, as defined by law and specified by the Master Contract or Individual Services Contract. A suggested sample of a Nonpublic School/Agency Monthly Invoice is provided in Appendix G.

Each page of the invoice and register must be signed by the authorized nonpublic school or agency staff member. If a stamped signature is used, it must be authenticated by the initials of the authorized person's designee. Unsigned or improperly signed invoices will be returned to the nonpublic school or agency and may delay payments.

The nonpublic school or agency must complete the invoice and register and forward them to the contracting local educational agency for payment at the end of each calendar month after services have been provided, unless otherwise specified in the contract.

On receipt of a request from the nonpublic school or agency for payment of services provided under a contract, the local educational agency may, according to the provisions of state law, take one of the following actions:

- Notify the contracted nonpublic school or agency within 10 working days of any reason the requested payment shall not be paid.

- Send a warrant for the requested amount invoiced by the nonpublic school or agency within 45 days of receipt of the invoice.

Failure by the local educational agency to comply with one of the above actions may result in the LEA's being held responsible to pay to the NPS or NPA an additional amount equal to 1.5 percent of the unpaid balance for each month that full payment is not made.

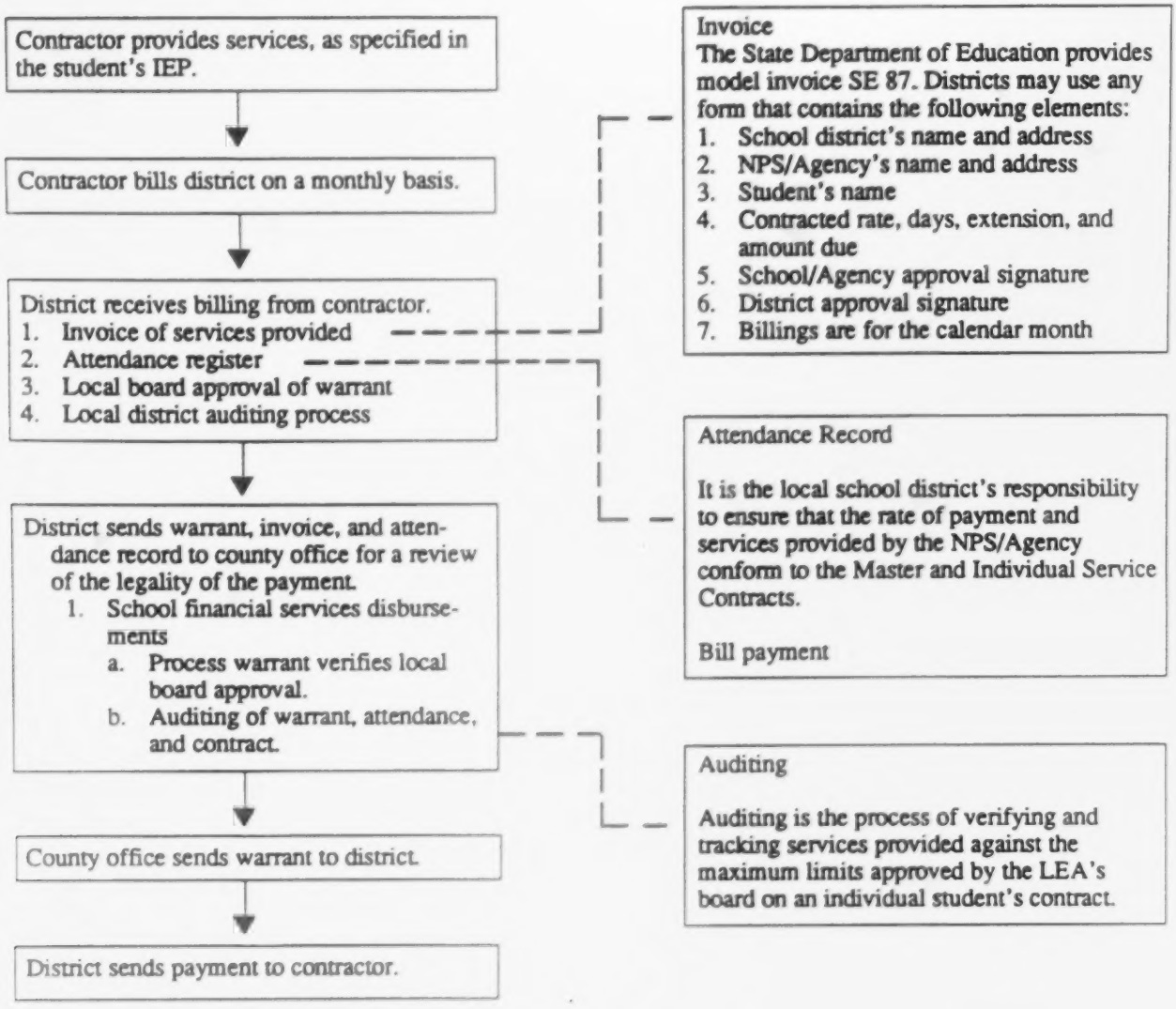
Chart C highlights the NPS/NPA billing process for special education and related services that are provided under a contract with a local educational agency.

State Reimbursement for NPS or NPA Services

State reimbursement to local public educational agencies for part or all of the costs of providing special education and related services under a contract with a state certified nonpublic, nonsectarian school or agency is authorized by Section 56740 of the Education Code.

The State Superintendent of Public Instruction apportions to each district and county office serving exceptional pupils in nonpublic, nonsectarian schools and agencies under Education Code Sections 56365 and 56366 an amount equal to 70 percent of the cost of the NPS or NPA tuition "in excess" of the revenue limit and applicable federal funds received for such pupils. As specified in state law, "excess cost" is the amount of the NPS or NPA tuition less the funds apportioned to each district or county office of education for the number of exceptional individuals served (a.d.a.) and applicable federal funds for which the pupils are entitled, such as those funds provided under PL 94-142.

Chart C
NPS/Agency Billing Process


Contractor provides services, as specified in the student's IEP.
Contractor bills district on a monthly basis.
District receives billing from contractor.
1. Invoice of services provided
2. Attendance register
3. Local board approval of warrant
4. Local district auditing process
District sends warrant, invoice, and attendance record to county office for a review of the legality of the payment.
1. School financial services disbursements
a. Process warrant verifies local board approval.
b. Auditing of warrant, attendance, and contract.
County office sends warrant to district.
District sends payment to contractor.
Invoice
The State Department of Education provides model invoice SE 87. Districts may use any form that contains the following elements:
1. School district's name and address
2. NPS/Agency's name and address
3. Student's name
4. Contracted rate, days, extension, and amount due
5. School/Agency approval signature
6. District approval signature
7. Billings are for the calendar month
Attendance Record
It is the local school district's responsibility to ensure that the rate of payment and services provided by the NPS/Agency conform to the Master and Individual Service Contracts.
Bill payment
Auditing
Auditing is the process of verifying and tracking services provided against the maximum limits approved by the LEA's board on an individual student's contract.

If the exceptional individual resides in a licensed children's institution (LCI) or foster family home which is not located in the district of residence of the parent who retains educational responsibility for the pupil's education, the State Superintendent apportions to each district and county office serving such pupils an amount which is equal to 100 percent of the excess costs of the NPS or NPA tuition. When the location of the LCI is also the district of residence of the parent who retains educational responsibility for the pupil, the district or county office of education is apportioned 70 percent of the excess cost of the NPS or NPA tuition.

As a condition of receiving NPS or NPA apportionments, local school districts and county offices of education are required to report to the State Superintendent when the cost of a pupil's NPS or NPA placement exceeds the average costs of serving a pupil in the district or county special day class by more than 100 percent. The computation of the average district and county special day class costs must include both instructional and support costs, including transportation and designated instruction and services. If the district or county office does not operate special day classes, the average costs are based on those of special day classes in the special education local plan area.

Reimbursement for costs of transportation between the local educational agency and the parent is allowed under the nonpublic school or agency provisions of law. Transportation services, as required by an IEP, may be included in the contract and tuition rate negotiated and agreed to with the nonpublic, nonsectarian special education school or agency.

The report on excess costs must be submitted on forms provided by the State Department of Education for the purposes cited above and include the following information:

- The name of the nonpublic, nonsectarian school in which the exceptional pupil is placed.
- A brief description of the services provided to that pupil.
- The total costs of the placement for that individual.

Additionally, districts and county offices, as a condition of receiving an NPS/NPA apportionment, must submit to the State Superintendent an annual report of the individual contracted program placement costs for providing special education, transportation, residential, and designated instruction and services to exceptional pupils placed in nonpublic, nonsectarian schools and agencies. This report shall show the placement costs in categories which include, but are not necessarily limited to, the following:

- Full-day placement
- Partial-day placement
- Residential placement within the state
- Residential placement outside the state

Other than the state apportionment for NPS/NPA tuition, the State Superintendent is prohibited by law from apportioning funds for the cost of NPS or NPA placements claimed by districts or county offices of education if the increase claimed from one year to the next exceeds the statewide average percentage inflation adjustments for school district rev-

enue limits or the percentage specified by the Budget Act, unless the Superintendent makes a specific and individual finding that a greater increase is warranted.

State Reimbursement for Nonpublic Preschool Placements

Education Code Section 56441.10 requires that early education services provided to exceptional pupils, ages three through four, who are defined by law as not requiring intensive special education and services shall not be funded through the previously described NPS/NPA tuition reimbursement procedure unless a waiver is approved by the State Superintendent. The waiver request must include the following information in order to be considered for approval:

- Number of children to be served in the NPS/NPA placement
- Types of handicaps to be served in the NPS/NPA setting
- Cost effectiveness of the NPS/NPA tuition reimbursement service delivery mode

Local educational agencies serving preschool pupils who "require intensive services" need not submit a waiver request to receive tuition reimbursement for the costs of an NPS or NPA placement.

Local education agencies serving pupils who do not require intensive services may use preschool instructional personnel services units (IPSUs) to purchase services from nonpublic schools and agencies to serve preschool pupils. The use of special education IPSUs to purchase NPS or NPA services for handicapped preschoolers does not require a waiver from the State Superintendent.

Fiscal Reporting Requirements, Procedures, and Forms

Local educational agencies are required to submit certain fiscal reports to the State Department of Education regarding the costs of special education and related services provided to exceptional pupils. The first and second state apportionment reports (P-1 and P-2) are made by the State Superintendent of Public Instruction each year in the fall and spring, respectively. Included in these reports are the costs of all special education programs in kindergarten through grade twelve, including nonpublic, nonsectarian school and agency services. The data for these reports are gathered by a packet of J-50 forms, which require that NPS and NPA contract services' costs be reported on worksheets contained in the packet.

Once local district and county superintendents have signed and certified the P-1 and P-2 reports of special education costs, the State Superintendent issues a report to the State Legislature, the Department of Finance, and the Office of the Legislative Analyst. The special education cost information gathered by the first and second apportionment reports provides a basis for planning legislative state budget proposals for special education funding each school year.

Since the 1986-87 school year, the State Superintendent of Public Instruction has established a Financial Management Advisory Committee (FMAC) composed of legislators and their staffs; fiscal experts, Department staff, the State Department of Finance, and others to establish uniform accounting standards to report the costs of public education programs in kindergarten through grade twelve.

Through the efforts of the FMAC, local education agencies also submit fiscal reports, referred to as the J-380 report for local school districts and the J-580 for county offices of education, to report the costs of all public education programs. Nonpublic school and agency contract costs must also be reported as part of the J-380/J-580 worksheets for the costs of local special education programs provided to exceptional individuals.

State laws enacted in 1981 also require that the state Superintendent of Public Instruction review any new nonpublic school and agency placement costs which exceed $20,000 per year. The 1981-enacted provision of law also provided that the $20,000 NPS/NPA cost threshold should be cumulatively increased by the cost of living adjustment (COLA) percentage of the State Budget Act.

In the 1989-90 school year, the NPS/NPA placement cost threshold was approximately $32,787. For further information about the $20,000 NPS/NPA cost report, inquiries should be directed to the State Department of Education, Special Education Division.

Chapter VI

Other NPS/NPA Questions and Answers

Given the statutory role of NPS or NPA programs contracted to serve eligible pupils when there are no appropriate public school programs available, effective contract procedures are often a question of interpreting existing laws and regulations for implementation purposes. However, there are several areas relating to contracting with nonpublic, nonsectarian schools and agencies to provide special education and related services which current laws or regulations do not address directly. This chapter is intended to help clarify for public and nonpublic special education program professionals information regarding the appropriate use of contracted services for exceptional pupils. The order of the following questions and answers is not intended, however, to reflect a rank ordering of such issues in any way.

A. Appropriate Use of the Superintendent of Public Instruction's Waiver of NPS/NPA Requirements Under Education Code Section 56366.1

1. Is a waiver under Education Code Section 56366.1 necessary to appropriately serve a student under a contract between an LEA and nonpublic school or agency which is not certified under Education Code Section 56366(c), when the LEA desires state reimbursement for the costs of placement and tuition?

Answer: Yes, when filing the petition with the Superintendent of Public Instruction, reasons must be given for the waiver, including "sufficient documentation to demonstrate that the waiver is necessary or beneficial to the content and implementation of the student's IEP and that the waiver does not abrogate any right provided individuals with exceptional needs and their parents or guardians under state or federal law, and does not hinder the compliance of the district, SELPA, or county office with Public Law 94-142, as amended; Section 504 of Public Law 93-112, as amended; and federal regulations relating thereto."

2. If a certified nonpublic school program cannot find an appropriately credentialed full-time teacher or substitute teacher for special education instruction provided under a contract with a local educational agency, is a Superintendent's waiver necessary in order for the NPS to receive a.d.a. credit and for the LEA to receive state reimbursement under Education Code Section 56740?

Answer: State regulations require that each student placed by an LEA in a nonpublic school or agency receive special education and related services from personnel who are "qualified" and meet federal and state certification, licensing, or other comparable requirements which apply to the area of service provided. If an NPS or NPA program provides special education or related services to pupils by employing persons who do not meet credentialling requirements, a petition to waive such requirements may

need to be requested, with sufficient documentation to demonstrate its benefit or necessity to the pupil's IEP.

B. Contracting with Noncertified NPS/NPAs

1. If a local educational agency determines the need for an NPS or NPA placement to appropriately serve a pupil but can identify only "noncertified" nonpublic schools or agencies within its special education local plan area, does Education Code Section 56366(c) prohibit the LEA from contracting with those noncertified programs, unless a waiver is secured from the Superintendent of Public Instruction?

Answer: Yes, Education Code Section 56366(c) states that "No contract for special education and related services provided by nonpublic, nonsectarian schools or licensed children's institutions shall be authorized under this part unless the school or institution has been certified as meeting those standards relating to the required special education services and facilities for indviduals with exceptional needs." Furthermore, Education Code Section 56366.1 states that "a district, special education local plan area, county office, nonpublic, nonsectarian school, nonpublic, nonsectarian agency, or licensed children's institution may petition the (state) superintendent to waive one or more of the requirements of Sections 56365 and 56366. The petition shall state the reasons for the request and shall include sufficient documentation to demonstrate that the waiver is necessary or beneficial to the content and implementation of the pupil's individualized education program and that the waiver does not abrogate any right provided individuals with exceptional needs and their parents or guardians under state or federal law and does not hinder the compliance of a district, special education local plan area, or county office with Public Law 94-142, as amended; Section 504 of Public Law 93-112, as amended; and federal regulations relating thereto."

2. If a court determines that an NPS or NPA that is not certified by the state under Education Code Section 56366(c) is the appropriate placement for a pupil, and the NPS or NPA program refuses to be certified, is the state obligated under the provisions of Education Code Section 56740 to reimburse the LEA for such placement tuition costs?

Answer: No, the State is not automatically obligated to reimburse a local education agency for costs incurred as a result of a court decision to place an exceptional pupil in a nonpublic school program which is not certified as a nonpublic, nonsectarian school or agency. The LEA will need to pursue a waiver under Education Code Section 56366.1.

3. If an LEA and parent mediate a resolution to a dispute wherein the appropriate placement is a noncertified nonpublic school or agency program, is the LEA eligible for state reimbursement of such placement tuition costs under Education Code Section 56740?

Answer: No, the local educational agency cannot receive state reimbursement, according to Education Code Section 56740, unless the nonpublic, nonsectarian school or agency has been certified as meeting those standards for special education and related services under Section 56366(c). Since the LEA and parent cannot negotiate an unlawful mediation agreement, the local educational agency must work with the NPS to obtain state certification or seek a waiver of those requirements. It would also be unlawful for the LEA to place a pupil in an uncertified NPS and to use local funds since it does not meet state standards and by definition would, therefore, be inappropriate.

C. LEA Designation of NPS/NPA Pupil Surrogate Parent

1. Under current provisions of Education Code Section 56156, does a *public agency* mean a *placing* agency (e.g., probation department, welfare department, local mental health department, etc.) which is responsible to identify the individual responsible to represent the interests of the child for educational and related services?

Answer: Yes, however, proposed legislation to define more specifically the procedures for designating a surrogate parent for pupils who are wards of a juvenile court is pending the 1990 Legislative Session.

2. Can a court designate a surrogate parent for a pupil placed in a residential nonpublic school program to represent the educational interests of the child?

Answer: No, a court may not appoint a surrogate parent for an exceptional individual. Federal law is clear that the appointment of a surrogate parent is an LEA responsibility. Although a court may appoint a guardian or conservator, if the pupil is a ward of the court, the LEA must appoint the surrogate parent to represent the child.

3. Is there a conflict of interest when a local noneducational public agency social worker (e.g., probation services, welfare services, etc.) serves as surrogate parent for a pupil placed in a residential nonpublic school program?

Answer: Federal regulations require that "a person assigned as a surrogate may not be an employee of a public agency which is involved in the education or care of the child." Proposed legislation to define more specifically the procedures for designating a surrogate parent for pupils who are wards of a juvenile court is pending approval in the 1990 Legislative Session.

D. Suspension or Expulsion of NPS/NPA Pupils

1. Under Education Code Sections 56365 and 56366, can the principal of a certified nonpublic school serving pupils under a contract with an LEA suspend a contracted pupil without prior notice or approval of the contracting LEA?

Answer: Education Code Section 48911.5 provides that "the site principal of a contracting nonpublic nonsectarian school providing services to individuals with exceptional needs under Sections 56365 and 56366 shall have the same duties and responsibilities with respect to the suspension of pupils with previously identified exceptional needs [as those] prescribed for the suspension of pupils under Section 48911." Education Code Section 48911 further specifies the procedures and circumstances through which the suspension of a pupil must be implemented. Provisions for prior notice and approval of a pupil's suspension by the contracting local educational agency, if desired by either party, should be established by the contract between the LEA and NPS or NPA program.

2. Can the principal of a certified nonpublic school serving pupils not under a contract with an LEA under Education Code Sections 56365 and 56366 suspend or expel pupils enrolled in the program?

Answer: Requirements for the suspension or expulsion of exceptional pupils placed in nonpublic schools or agencies affect those individuals who are placed under Education Code Sections 56365 and 56366 et seq. by a local education agency in order to provide that pupil a "free appropriate public education." If the nonpublic school serves pupils placed by other public agencies, the principal should consult requirements imposed by those agencies. If the nonpublic school serves pupils placed by their parents or guardians, placement agreements made between the parents or guardians and the nonpublic school should be consulted.

3. Should specific procedures and policies for the suspension or expulsion of pupils under contract between an LEA and nonpublic school or agency program be specified in the contract?

Answer: Although there is no statutory or regulatory requirement to do so, it is recommended that the contract agreement between a contracting local educational agency and nonpublic school or agency program include procedures and responsibilities of both parties whenever contracted pupils are suspended. Since expulsion is tantamount to a change of placement, the LEA should ensure that the NPS agrees in the contract to abide by the "stay-put" requirements. Otherwise, the LEA would find itself in immediate noncompliance if the pupil's placement were changed during the due process proceedings, and the NPS or NPA could jeopardize its state certification status.

4. If a nonpublic school principal believes that a pupil should be suspended and the contracting LEA believes that the pupil's placement should be changed entirely, what procedures are available to resolve the disagreement?

Answer: The decisions about the appropriateness of placement in a nonpublic school remains with the pupil's Individualized Education Program Team. Disputes between a contracting local educational agency and nonpublic school relating to the appropriateness of the nonpublic school placement are resolved through the parent's right to due process procedural safeguards, as outlined in state law and regulations.

5. Is there a limit to the number of times a pupil who resides in an LCI while attending a public school special education program can be suspended before an IEP Team must be convened to consider expulsion or a change of placement for that pupil?

Answer: Education Code Section 48903 establishes a limit of 20 school days of suspension in any school year. In addition, a recent program advisory issued by the State Department of Education states that after the "second suspension during the same semester, it is advisable to reconvene an IEP Team to determine whether a change in placement, program, or services is warranted." Based on the federal court decision of *Doe* v. *Honig*, the advisory does not separately address pupils who reside in LCIs as opposed to those who do not.

E. NPS/NPA Insurance Liability Requirements

1. What are reasonable requirements for liability insurance to be provided by a nonpublic school or agency that contracts to provide special education and related services to pupils referred and placed by local educational agencies?

Answer: Current law and regulations require that a contracted and state certified nonpublic school or agency possess "reasonable insurance," as stipulated by the contract, when determining the appropriateness of the nonpublic school's or agency's services. These requirements also provide that the contract shall indemnify the local educational agency against loss or liability.

The level of reasonable insurance is a matter for negotiation between the contracting local educational agency and nonpublic school or agency in which a pupil's placement is being considered. While the level of insurance felt to be necessary varies from LEA to LEA, the specific level of insurance needed will depend on the LEA's or NPS/NPA's liability exposure. The premium cost for the liability insurance required is also considered in the final determination of what level of insurance is reasonably needed and affordable by the LEA and NPS/NPA program.

F. Impact of *Butterfield* v. *Honig* Settlement on AB 3632 Services

1. Does the settlement in the decision of *Butterfield* v. *Honig* impact other counties besides Los Angeles County?

Answer: The *Butterfield* v. *Honig* litigation was settled by a Consent Decree issued by the federal district court to require the Los Angeles County Mental Health Department to provide mental health services to eligible pupils who reside in Los Angeles County. The settlement has no direct effect or impact on other counties in California, other than clarifying the role of the State Department of Education in assuring that the provisions of the Education of the Handicapped Act are carried out. (For the provisions of the *Butterfield* v. *Honig* settlement see Appendix K.)

APPENDIX A

A GLOSSARY OF COMMONLY USED TERMS RELATING TO CALIFORNIA'S SPECIAL EDUCATION PROGRAMS

APPROPRIATE EDUCATION: As in "free appropriate public education," is an educational program and related service(s), as determined on an individual basis, which meets the unique needs of each individual with exceptional needs. Such an educational program and related service(s) shall be based on goals and objectives as specified in an individualized education program and determined through the process of assessment and IEP planning in compliance with state and federal laws and regulations. Such an educational program shall provide the equal opportunity for each individual with exceptional needs to achieve his or her full potential, commensurate with the opportunity provided to other pupils. (CCR 3001)

ASSESSMENT PLAN: A document which is approved by the parent and describes all assessment instruments that the LEA intends to administer to the pupil. The assessment plan also includes a description of all recent assessments conducted, including any available independent assessments and any assessment information the parent requests to be considered. The document must indicate the student's primary language. The parent must grant written permission before assessment may begin and may rescind an agreement whereby assessment procedures would stop immediately.

APPLICANT: An individual, firm, partnership, association, or corporation that has made application for certification as a nonpublic, nonsectarian school or agency. (CCR 3001(a))

CALIFORNIA CODE OF REGULATIONS (CCR), TITLE 5: The regulations adopted by the State Board of Education to govern special education programs for California's individuals with exceptional needs.

CALIFORNIA EDUCATION CODE (EC): The state laws passed by the State Legislature and signed by the Governor.

CERTIFICATION: Authorization by the Superintendent for a nonpublic school or nonpublic agency to service individuals with exceptional needs under a contract pursuant to the provisions of Education Code Section 56366(c), (CCR 3001)

CONTRACT: The legal document which binds the public educational agency and the nonpublic school or nonpublic agency. Often referred to as a Master Agreement or Master Contract, a contract is a document negotiated between the LEA and contracted state certified nonpublic schools or agencies. The contract includes the terms by which the district and the NPS/NPA operate within the school year. (EC 56366)

CONTRACTING LOCAL EDUCATION AGENCY: School district, special education local plan area, or county office of education.

DUAL ENROLLMENT: A term used to describe a student who, in order to meet the goals and objectives specified in the IEP, is enrolled concurrently in a public and a non-public school or agency. (CCR 3066)

EXPANDED IEP TEAM: Means an Individualized Education Program Team which has been expanded to include a representative of the local county mental health department or designee when an individual pupil is believed to have needs for mental or other noneducational related services, such as residential or health services.

FEASIBLE: As used in Education Code Section 56363(a) means the Individualized Education Program Team has: (1) determined that the regular class teacher, special class teacher, and/or resource specialist possesses the necessary competencies and credentials/certificates to provide the designated instruction and service specified in the individualized education program; and (2) considered the time and activities required to prepare for and provide the designated instruction and service by the regular class teacher, special class teacher, and/or resource specialist. (CCR 3066)

FREE APPROPRIATE PUBLIC EDUCATION: The provision of education and related services at no cost to the student or to his or her parents. Appropriateness is defined by the individualized education program (IEP) as designed to meet the student's learning needs. (USC 34 CFR 300.300)

IEP TEAM: This team must consist of the following members: the parent(s) or legal guardian; school personnel providing services to the student, including the teacher; and the LEA administrator. (EC 56341)

INDIVIDUAL SERVICE AGREEMENT: A binding document which is part of the Master Contract or Agreement executed between the contracting LEA and NPS/NPA for each pupil placed in the NPS/NPA. It specifies the services required by each pupil's IEP and the specific payments to the NPS/NPA for providing those services. (CCR 3022)

INDIVIDUALIZED EDUCATION PROGRAM (IEP): A written document prepared for each special education student which addresses the educational needs of the student. It includes statements of special education and related services which are to be provided to the student. The components are: (1) statement of present levels of education achievement; (2) annual goals and short-term objectives; (3) related services and anticipated duration; (4) extent of participation in regular education; and (5) annual review. The program option is determined from the IEP document. (USC 34 CFR 300.340)

INSTRUCTIONAL DAY: Shall be the same period of time as constitutes the regular school day for that chronological peer group unless otherwise specified in the individualized educational program. (CCR 3001)

INTENSIVE SPECIAL EDUCATION AND SERVICE: Instruction and services without which the pupil would be unable to develop the skills necessary to achieve educational goals appropriate to his or her developmental and cognitive level or potential. Such instruction and services may be provided in any of the program options described in Education Code Section 56361. (CCR 3001)

LEAST RESTRICTIVE ENVIRONMENT (LRE): The guarantee that education for handicapped students will be provided with nonhandicapped students to the maximum extent appropriate. LRE also means that there must be a continuum of alternative settings in which a student may be placed, ranging from regular classrooms to more intensive settings, such as special classes on a full- or part-time basis, special schools, or residential institutions.

LICENSE: A valid license issued by the Board of Medical Quality Assurance, Board of Consumer Affairs, Board of Behavioral Sciences Examiners, or other state licensing office authorized to grant licenses which may be applicable to providing services for individuals with exceptional needs. If a license is not available through an appropriate state licensing agency, a certificate of registration with the appropriate professional organization at the national and/or state level which has standards established for the certificate is equivalent to the license. (CCR 3001)

LOCAL EDUCATIONAL AGENCY (LEA): A local school district, special education local plan area, or county office of education that is responsible to provide educational services to public elementary and/or secondary pupils.

MULTIDISCIPLINARY TEAM: Qualified persons who are able to use testing and assessment materials and procedures for the purpose of assessing and deciding on program options of the student so as not to be racially, culturally, or sexually discriminatory. This team functions together at the IEP meeting. (CCR 56320)

NONPUBLIC AGENCY (NPA): Any private, nonsectarian establishment or individual providing related services to exceptional pupils. (CCR 3001)

NONPUBLIC SCHOOL (NPS): Means any private, nonsectarian school enrolling individuals with exceptional needs and employing at least one full-time teacher holding an appropriate credential authorizing special education services, and certified by the State Department of Education. The nonpublic school shall meet those standards as prescribed in CCR Section 3062.

NONSECTARIAN: Nonsectarian status means a nonpublic school or agency that is not owned, operated, controlled by, or formally affiliated with a religious group or sect, whatever might be the actual character of the education program or the primary purpose of the facility. (CCR 3001)

OTHER PUBLIC AGENCIES: Educational programs and services administered by other public agencies which provide educational programs and services to individuals with exceptional needs shall adhere to the provisions of federal and state laws and regulations relating to individuals with exceptional needs. (Education Code Sections 56000, 56100(1), 56500; 34 CFR 300.2, 300.11, 300.600, CCR 3010)

PLACEMENT: The specific physical location or school site selected for the implementation of the pupil's IEP.

PRESCRIBED COURSE OF STUDY: As used in Education Code Section 56026(c)(4), means the course of study that is established by the local school district governing board, pursuant to Education Code Section 51000 et seq. (CAC 3001)

PROGRAM OPTION: The specific programs available to special education pupils: (1) Resource Specialist Program; (2) Designated Instruction and Services; (3) Special Classes and Centers; (4) Nonpublic, Nonsectarian Schools or Agencies; and (5) State Special Schools.

PUBLIC LAW 94-142: Education of All Handicapped Children Act of 1975, as amended by Public Law 94-142.

QUALIFIED: Means a person who has met federal and state certification licensing, registration, or other comparable requirements which apply to the area in which he or she is providing special education or related services, or, in the absence of such requirements, the state education agency's approved or recognized requirements, and adheres to the standards of professional practice established by federal and state law or regulation, including standards contained in the California Business and Professions Code. Nothing in this definition shall be construed as restricting the activities in the services of a graduate needing direct hours leading to licensure, or of a student teacher or intern leading to a graduate degree at an accredited or approved college or university, as authorized by state laws or regulations. (CCR 3001(t))

RELATED SERVICES: Services which are needed by the student to support the special education classroom instruction. Related services include transportation and other supportive services, such as speech pathology and audiology, psychological services, physical and occupational therapy, and medical and counseling services (except those medical services that must be used for diagnostic and evaluation purposes only that may be required to assist a student to benefit from special education). (34 CCR, Part 300.13)

SELPA: Means a special education local plan area in California which is referred to as an intermediate educational unit in PL 94-142.

TEAM APPROACH: PL 94-142 regulations specify that the IEP is to be developed by a representative of the district who is qualified to provide or supervise the program, the teacher, the parent(s), other individuals at the discretion of parents or agency, evaluation personnel if student has been evaluated for the first time, and the student, when appropriate.

TRANSDISCIPLINARY TEAM: Chapters 4.4 and 4.45 of the Education Code describe a transdisciplinary team for services to infants and preschoolers ". . . as a group of professionals from various disciplines and parents who shall share their expertise and otherwise work together to provide these services . . . ."

APPENDIX B

FEDERAL REQUIREMENTS RELATING TO CHILDREN NOT PLACED IN SCHOOLS BY SEA/LEAS

Implementing regulations specify requirements for state and local educational agencies' responsibility for appropriately serving eligible handicapped children who are placed in private schools by parents in accordance with **34 CFR 300.403,** as follows:

"(a) If a handicapped child has available, free, appropriate public education and the parent chooses to place the child in a private school or facility, the public agency is not required by this parent to pay for the child's education at the private school or facility. However, the public agency shall make services available to the child as provided under Regs. 300.450–300.460.

"(b) Disagreements between a parent and a public agency regarding the availability of a program appropriate for the child, and the question of financial responsibility, are subject to the due process procedures under Regs. 300.500–300.514 of Subpart E.

"(c) To the extent consistent with their number and location in the State, provision is made for the participation of private school handicapped children in the program assisted or carried out under this part by providing them with special education and related services; and,

"(d) The other requirements in 34 CFR 76.651–76.663 of EDGAR are met." **[34 CFR 300.452]**

For local educational agencies, the regulations specify that "each local educational agency shall provide special education and related services designed to meet the needs of private school handicapped children residing in the jurisdiction of the agency." **[34 CFR 300.452]**

As a federal state assistance grant program the Education of the Handicapped Act became subject to the Education Division General Administrative Regulations (EDGAR) in April, 1980. EDGAR specified, among other provisions, requirements for the participation of all eligible handicapped children enrolled in private schools. As the recipient of federal PL 94-142 funds provided by the act, state and local educational agencies are required to "provide students enrolled in private schools with a genuine opportunity for equitable participation" in the benefits of the act **[34 CFR 76.651(a)(1)]** which is consistent with their needs, number, and location in the state, by providing them with special education and related services.

EDGAR further specifies that, in the development of state and local plans for the education of the handicapped children, state and local educational agencies must meet specified requirements to "consult with appropriate representatives of students enrolled in private schools during all phases of the development and design of the project covered by the

application" **[34 CFR 76-652(a)]** and before any decision is made "that affects the opportunities for those students to participate in the project." **[34 CFR 76.652(b)]**

In preparing their special education local plan, as required under PL 94-142, local educational agencies are also required to ensure private school participation by including the following information in their plan, after consultation with appropriate private school representatives in their jurisdiction:

"(a) A description of how the applicant will meet the Federal requirements for participation of students enrolled in private schools.

"(b) The number of students enrolled in private schools who have been identified as eligible to benefits under the program.

"(c) The number of students enrolled in private schools who will receive benefits under the program.

"(d) The basis the applicant used to select the students.

"(e) The manner and extent to which the applicant complied with Regs. 76.652 (consultation).

"(f) The places and times that the students will receive benefits.

"(g) The differences, if any, between the program benefits the applicant will provide to public and private school student, and the reasons for the differences." **[34 CFR 76.656]**

In addition, EDGAR provisions require LEAs to:

1. Not use program funds for classes that are organized separately on the basis of school enrollment or religion of the students if the classes are on the same site and include students enrolled in public and private schools. **[34 CFR 76.657]**

2. Not use program funds to finance the existing level of instruction in private school or to otherwise benefit the private school. Local educational agencies are allowed, however, to use program funds to meet the specific needs of students enrolled in such schools. **[34 CFR 76.658]**

3. May use program funds to make public school personnel available in other than public facilities: (a) to the extent necessary to provide equitable program benefits designed for the private school students; and (b) if those benefits are not normally provided by the private school. **[34 CFR 76.659]**

4. May use program funds to pay for services of an employee of a private school if (a) the employee performs services outside his or her regular hours of duty; and (b) the employee performs such services under the supervision and control of the local public agency. **[34 CFR 76.660]**

5. May place equipment and supplies in a private school for the period of time needed for the project, but must keep title to and exercise continuing administrative control of all equipment and supplies acquired with program funds. **[34 CFR 76.662]**

6. Shall ensure that program funds are not used for construction of private school facilities. **[34 CFR 76.662]**

Other related requirements of the EDGAR provisions for the "equitable participation" of private school handicapped children were made through the EHA Amendments of 1983, Public Law 98-199, involving a U.S. Secretary of Education's "by-pass" of state and local educational agencies in order for special education and related services to be provided directly to those students, as appropriately identified by their IEP.

APPENDIX C

Contract No. _____

SAMPLE

MASTER CONTRACT
FOR NONPUBLIC, NONSECTARIAN SCHOOL/AGENCY SERVICES
(Education Code Sections 56365 et seq.)

THIS AGREEMENT made and entered into this _____day

of _____, 19__, between _____
(Local Public Education Agency)

_____ county of _____,
(address)

hereinafter referred to as the "DISTRICT" and _____
(Nonpublic School/Agency)

_____, hereinafter referred to as "CONTRACTOR"
(address)

for the purposes of providing special education or related services to individuals with exceptional needs under the authorization of Education Code Sections 56365 et seq.

The Governing Board of the DISTRICT desires to provide special education and/or related services to the pupils pursuant to Education Code Sections 56300, 56365, 56366, and 56740; and

The DISTRICT determined that the need for such services exists; CONTRACTOR is a nonpublic school or agency holding all required certificates and licenses; and that CONTRACTOR is capable of and willing to provide such services.

Attached hereto and incorporated herein by reference is the form of "Individual Service Contract for Nonpublic, Nonsectarian School/Agency Services" which CONTRACTOR will be required to execute with DISTRICT with respect to each pupil for whom CONTRACTOR is to provide services.

In consideration of the mutual promises contained herein, it is mutually agreed between the parties as follows:

GENERAL PROVISIONS

1. MODIFICATIONS AND AMENDMENTS:

This contract may be modified or amended by a written document which complies with legal mandates, executed by CONTRACTOR and DISTRICT. Changes in the educational services or placement provided under the contract may be made only on the basis of revisions to the pupil's individualized education program. At any time during the term of the contract, the parent, nonpublic school, or school district may request a review of the pupil's individualized program, subject to all procedural safeguards. Changes in the administrative or financial agreements of the contract which do not alter the educational services or placement may be made at any time during the term of the contract, as mutually agreed in writing by the nonpublic school and the DISTRICT.

2. NOTICES:

All notices provided for this contract shall be in writing and shall be delivered by certified or registered mail, postage prepaid. Notices to DISTRICT shall be addressed to

_____

_____. Notices to CONTRACTOR shall be addressed

to_____.

The effective date of notice shall be the date of receipt by addressee.

3. DISPUTES:

Disagreements between DISTRICT and CONTRACTOR concerning the meaning, requirements, or performance of this contract shall be submitted to the County Superintendent of Schools or to the State Superintendent of Public Instruction when the County Superintendent of Schools is participating in the local plan involved in this contract. The determination of the County Superintendent or Superintendent of Public Instruction shall be made in writing and shall be binding on both parties.

4. SUBCONTRACT AND ASSIGNMENT:

CONTRACTOR shall not enter into subcontracts for any of the work contemplated under this contract without first obtaining written approval from the DISTRICT. Such approval shall be attached and made part of this contract. Subcontracts may be entered into only with nonpublic agencies certified by the California State Department of Education. This contract binds the heirs, successors, assignees, and representatives of CONTRACTOR.

5. INDEPENDENT CONTRACTOR STATUS:

This contract is by and between two independent agents and is not intended to and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture, or association.

6. CONFLICTS OF INTEREST:

CONTRACTOR agrees to furnish on request to DISTRICT a valid copy of the most recently adopted partnership agreements or bylaws and articles of the corporation and also a complete and accurate list of the Governing Board of Directors (or Trustees or Partners) and to timely update said information as changes in such governance occur. CONTRACTOR promises and attests that the CONTRACTOR and any Board of Directors of the CONTRACTOR shall avoid any actual or potential conflict of interest including, but not limited to, employment with DISTRICT.

7. TERMINATION:

This agreement may be terminated for cause. Cause shall include nonmaintenance of current nonpublic school/agency certification. To terminate this contract, either party shall give 20 calendar days written notice. Upon termination without default of CONTRACTOR, DISTRICT shall pay, without duplication, for all services performed and expenses incurred to date of termination. In consideration of this payment, CONTRACTOR waives all right to any further payment or damage and shall turn over to DISTRICT everything pertaining to its services hereunder, possessed by CONTRACTOR or under its control at the time of termination.

Individual Service Contracts may be terminated without advance notice if both parties agree to do so. The DISTRICT shall not terminate Individual Service Contracts because of the availability of a public class initiated during the course of the contract unless the parent agrees to transfer of a pupil to a public school program.

8. INSPECTION AND AUDIT:

CONTRACTOR shall provide access to or forward copies of any books, documents, papers, reports, records or other matter relating to the contract on request by the DISTRICT, except as otherwise provided by law.

9. INDEMNIFICATION:

CONTRACTOR shall defend, save harmless, and indemnify DISTRICT and its officers, agents, and employees for all liabilities and claims for damages for death, sickness, or injury to persons or property, including without limitation all consequential damages from any cause whatsoever arising from or connected with its service hereunder, whether or not resulting from the intentional or negligent acts of omissions of CONTRACTOR, its agents, or employees.

10. INSURANCE:

During the entire term of this contract and any extension or modification thereof, CONTRACTOR shall keep in effect a policy or policies of liability insurance, including coverage of owned and nonowned automobiles of at least $ _____ for each person and $ _____ for each accident or occurrence for all damages arising out of death, bodily injury, sickness, or disease from any one accident or occurrence, and $_____ for all damages and liability arising out of injury to or destruction of property for each accident or occurrence. Not later than the effective date of this contract, CONTRACTOR shall provide DISTRICT with satisfactory evidence of insurance, naming the DISTRICT as additional insured, including a provision for a 20 (twenty) calendar day written notice to DISTRICT before cancellation or material change, evidencing the above-specified coverage. The CONTRACTOR shall at its own cost and expense procure and maintain insurance under the Workers' Compensation Law of California.

11. No charge of any kind to parents shall be made by CONTRACTOR for mandated educational and designated instruction services, including screening or interviews which may occur prior to a pupil's enrollment, under the terms of this contract.

12. For the purpose of the contract, a parent is the natural or adoptive parent or legal guardian.

13. CONTRACTOR shall provide appropriately credentialed teachers or licensed personnel consistent with the California Code of Regulations, Title 5, the California Education Code, and DISTRICT requirements, as specified, to provide service(s) to pupils under this general contract, unless a written waiver has been granted by the Superintendent of Public Instruction. CONTRACTOR shall be responsible for verification of credentials and licenses held by its employees, agents, and subcontractors. Credentials shall be on file at

_____.
DISTRICT/COUNTY OFFICE

CONTRACTOR shall immediately notify DISTRICT/COUNTY and provide copies of appropriate credential(s) and/or license(s) if change of staff occurs which directly affects the pupils.

14. DISTRICT shall provide CONTRACTOR with copy of each pupil's individualized education program. CONTRACTOR will provide pupils a program of instruction within the nonpublic school or agency which is consistent with each pupil's individualized education program, as specified in the Individual Service Contract/Agreement. The program of instruction shall be described in writing and a copy provided to DISTRICT prior to the effective date of this contract.

15. GRADUATION REQUIREMENTS:

If the pupil is of secondary school age, the DISTRICT will list the course requirements to be satisfied by the CONTRACTOR leading toward graduation and specify levels of proficiency in basic skills, as measured by DISTRICT approved proficiency tests.

The public school maintains responsibility for verification of fulfillment of the graduation requirements; therefore, at the close of each semester during grades 10, 11, and 12, CONTRACTOR shall prepare transcripts and submit them to DISTRICT. DISTRICT shall evaluate pupils' transcripts to approve progress toward completion of diploma requirements.

16. CONTRACTOR shall allow periodic monitoring of the pupil's instructional program by DISTRICT and shall be invited to participate in the review of the pupil's progress by the DISTRICT. Representatives of DISTRICT shall have access to observe the pupil at work, to monitor the instructional setting, to interview CONTRACTOR, and to review the pupil's progress. CONTRACTOR agrees that DISTRICT representatives may make unannounced monitoring visits on presentation of identification at site office.

17. CONTRACTOR will provide for reasonable parental visits to all the school facilities including, but not limited to, the instructional setting attended by the pupil, school and recreational activity areas, and pupils' living quarters.

18. CONTRACTORS operating programs with residential components shall cooperate with parent(s') reasonable requests for pupil visits in their home, including, but not limited to, holidays and weekends.

19. CHANGE OF RESIDENCE:

CONTRACTOR shall notify DISTRICT in writing of pupil's changes of residence within three days after CONTRACTOR becomes aware of said change. CONTRACTOR shall notify parents in writing of their obligation to notify CONTRACTOR of changes of pupil's residence. If CONTRACTOR neglects to follow these procedures, costs for services delivered after CONTRACTOR becomes aware of a pupil's change of residence to another DISTRICT shall be assumed by CONTRACTOR.

20. CONTRACTOR shall immediately report to DISTRICT if a pupil is removed from school by the parent or if the pupil absents himself or herself from school without permission.

21. No later than the _____ (not to exceed ten [10]) consecutive
(No. of days)
days of a pupil's absence, CONTRACTOR shall notify DISTRICT in writing of such absence. DISTRICT shall be responsible for payment for no more than _____ consecutive days
(No. of days)
of excused absence unless a written time extension is granted by DISTRICT.

22. CONTRACTOR agrees to provide a written accident report to the DISTRICT when a pupil has suffered an injury that requires medical attention.

23. Progress reports and other data required for review shall be sent by CONTRACTOR to DISTRICT no later than _____, _____, _____, _____. An updated report shall be submitted if there is no current progress report when pupils are scheduled for a review by the DISTRICT's Individualized Education Program Team or when a pupil is terminated.

24. CONTRACTOR shall not discriminate on the basis of race, religion, sex, national origin, age, or handicap in employment or operation of its programs.

25. PAYMENT PROVISIONS:

CONTRACTOR shall keep attendance of each pupil daily and shall report attendance monthly to DISTRICT. Such attendance shall be kept on attendance registers approved by DISTRICT, and the original and copies of such registers shall be filed with monthly invoices to DISTRICT within thirty (30) days of the close of the school month. Separate attendance registers must be submitted for all related services, as specified on individualized education program. Original attendance registers submitted to the DISTRICT with invoices for payment must be completed by the service provider whose signature must appear on said register. CONTRACTOR is responsible for verifying accuracy of said registers and for informing service providers of their personal responsibility for the completion and accuracy of said attendance registers. CONTRACTOR shall permit DISTRICT representatives, on reasonable notice, to meet with staff of contractor for the purpose of auditing attendance reporting.

26. A unit of service for payment purposes is one day of attendance or excused absence as defined in Education Code Section 46010. DISTRICT shall not be responsible for payment of services for days on which a pupil's attendance or absence does not qualify for reimbursement under state law. Per diem rates for pupils whose individualized education program authorizes less than a full instructional day may be adjusted.

27. RATE SCHEDULE:

Educational service(s) offered by CONTRACTOR in accordance with the individualized education program and the charges for such service(s) during the term of this contract shall be as follows:

A. Basic Education Program	Rate	Period (Specify)
_____	_____	per _____
_____	_____	per _____
B. Related Services		
(1) Transportation	_____	per _____
(2) a. Counseling - Group	_____	per _____
b. Counseling - Individual	_____	per _____
(3) Adapted Physical Education	_____	per _____
(4) Language/Speech Therapy	_____	per _____

(5) Room and Board _____ per _____

(6) _____ _____ per _____

(7) _____ _____ per _____

(8) _____ _____ per _____

28. PAYMENT DEMAND:

CONTRACTOR shall submit written demand monthly for payment. Said demand shall be made in the manner prescribed by the DISTRICT. CONTRACTOR shall submit said demands for payment for services rendered no later than thirty (30) days from the end of the attendance accounting period in which said services are actually rendered. On approval of said payment demand, DISTRICT shall make payment in an amount equal to the number of creditable days of attendance multiplied by the agreed on unit amount. Payment shall be made within 45 days of receipt by the DISTRICT of invoices properly submitted.

29. RIGHT TO WITHHOLD:

DISTRICT may withhold payment to CONTRACTOR, on ten (10) working days written notice of such withholding, when in the opinion of the DISTRICT: (a) CONTRACTOR'S performance, in whole or in part, either has not been carried out or is insufficiently documented; (b) CONTRACTOR has neglected, failed, or refused to furnish information or to cooperate with the inspection, review, or audit of its program, work, or records; (c) when service is provided by personnel who are not appropriately credentialed/licensed or whose credential(s)/license(s) are not on file as specified in Item 13 of this contract; and (d) when properly submitted payment demand is not received by DISTRICT within thirty (30) days from the end of the attendance accounting period. If DISTRICT gives said notice of intent to withhold, CONTRACTOR shall have fourteen (14) days from the date of receipt of said notice to correct such deficiency. On written request from CONTRACTOR documenting reasonable justification, DISTRICT shall agree to an extension of fourteen (14) days for correction.

30. AUDIT EXCEPTIONS:

CONTRACTOR agrees to accept responsibility for receiving, replying to, and/or complying with any audit exceptions by the DISTRICT or by appropriate state or federal audit agencies occurring as a result of the CONTRACTOR'S performance of this contract. CONTRACTOR also agrees to pay to DISTRICT within thirty (30) days of demand by DISTRICT the full amount of DISTRICT'S liability to the state, if any, resulting from any audit exceptions, to the extent such are attributable to CONTRACTOR'S failure to perform properly any of its obligations under this contract.

31. COMPLIANCE WITH LAWS:

During the term of this agreement, CONTRACTOR shall comply with all applicable federal, state, State Board of Education, and local statutes, laws, ordinances, rules, and regulations relating to the required special education services and facilities for individuals with exceptional needs.

The parties hereto have executed this agreement by and through their duly authorized agents or representatives.

This contract is effective on _____

and terminates at 5:00 p.m. on _____

unless sooner terminated as provided herein.

-CONTRACTOR-		-DISTRICT-	
_____		_____	
(Name of Nonpublic School/Agency)		(School District)	
_____	_____	_____	_____
(Contracting Officer's Signature)	(Date)	(Signature)	(Date)
_____		_____	
(Type Name and Title)		(Type Name of Superintendent)	

Approved by the Governing Board on _____
(Date)

APPENDIX D

SAMPLE

INDIVIDUAL SERVICES CONTRACT FOR
NONPUBLIC, NONSECTARIAN SCHOOL/AGENCY SERVICES

(Education Code Sections 56365—56366.5)

THIS SERVICE CONTRACT is made and entered into this _____ day of _____, 19 _____, between _____ County of (Local Education Agency) _____, hereinafter referred to as "DISTRICT" and _____, herein referred to as "CONTRACTOR" for (Nonpublic School/Agency)

_____, _____,
(Name of Pupil) (Address of Pupil)

_____, _____, _____,
(Date of Birth) (Sex) (Elem./Sec.)

hereinafter referred to as "PUPIL," who is a resident of _____.

Pupil's school of residence is _____.

Name of Parent: _____

Address of Parent: _____ Phone Number: _____

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1. All terms and conditions of the current Master Contract for Nonpublic, Nonsectarian School/ Agency Services, herinafter referred to as the Master Contract, previously executed by the parties hereto, are incorporated herein by reference. The CONTRACTOR will implement the individualized education program (IEP) and will request an IEP review prior to any change in the service program.

2. This contract is authorized for up to _____ days and/or _____ sessions of _____ minutes or as specified in the individualized education program.

3. Subject to the performance of this contract, DISTRICT will pay CONTRACTOR $_____ per unit, as defined in Item 26 of the MASTER CONTRACT.

4. The pupil's teacher/service provider will hold the following credential/license: _____.

5. The class size for the pupil will not exceed _____, and/or the therapist/pupil ratio will be _____.

6. The length of the instructional program will be _____ per day, Monday through Friday. (minutes)

7. DISTRICT graduation requirements, including differential proficiency standards, if applicable, shall be implemented as attached, or as specified in the IEP.

8. AUTHORIZED educational services, as specified in the IEP, shall be provided by the CONTRACTOR up to the amount specified.

A. BASIC EDUCATION PROGRAM

Number of Days _____ X Per Diem $ _____

MAXIMUM TOTAL BASIC EDUCATION COSTS (A) $ _____

B. DESIGNATED INSTRUCTION AND SERVICE/RELATED SERVICES

SERVICE	Provider			Total Minutes Per Session	Cost Per Session			Maximum Number of Sessions	Max. Total Cost For Contract Period
	LEA	NPS	Other (Identify)		Hrly	Daily	Wkly		
1. Transportation									
2. Educ. Counseling - Group Educ. Counseling - Individual									
3. Adapted Physical Education									
4. Language/Speech Therapy									
5. Orientation/Mobility Trng.									
6. OT/PT									
7.									
8.									
9.									
10.									

MAXIMUM TOTAL RELATED SERVICES COST (B) $ _____

MAXIMUM TOTAL BASIC EDUCATION AND RELATED SERVICES COSTS (A+B) $ _____

MAXIMUM PER DIEM FOR BASIC EDUCATION AND RELATED SERVICES $ _____

(Total amount divided by number of days)

9. Other provisions as necessary: _____

_____

_____

The parties hereto have executed this contract by and through their duly authorized agents or representatives.

This contract is effective on _____
and terminates at 5:00 p.m. on _____
unless sooner terminated as provided herein.

-CONTRACTOR-	-DISTRICT-
_____	_____
(Name of Nonpublic School/Agency)	(Name of School District)
_____	_____
(Contracting Officer's Signature) Date	(Signature) Date
_____	_____
(Type Name and Title)	(Type Name of Superintendent)

APPROVED BY THE GOVERNING BOARD ON _____
Date

APPENDIX E

REQUIRED COURSES OF STUDY FOR PUPILS ENROLLED IN CALIFORNIA PRIVATE FULL-TIME DAY SCHOOLS

Private schools are required to "offer instruction in the several branches of study required to be taught in the public schools of the state" (Education Code Section 48222). Courses required to be taught in grades one through twelve in public schools are as follows:

Areas of study; grades one to six (inclusive) (Education Code Section 51210)

(a) English, including knowledge of, and appreciation for literature and the language, as well as the skills of speaking, reading, listening, spelling, handwriting, and composition.

(b) Mathematics, including concepts, operational skills, and problem solving.

(c) Social sciences, drawing upon the disciplines of anthropology, economics, geography, history, political science, psychology, and sociology, designed to fit the maturity of the pupils. Instruction shall provide a foundation of understanding the history, resources, development, and government of California and the United States of America; the development of the American economic system, including the role of the entrepreneur and labor; man's relations to his human and natural environment; eastern and western cultures and civilizations; contemporary issues, and the wise use of natural resources.

(d) Science, including the biological and physical aspects, with emphasis on the processes of experimental inquiry and on man's place in ecological systems.

(e) Fine arts, including instruction in the subjects of art and music, aimed at the development of aesthetic appreciation and the skills of creative expression.

(f) Health, including instruction in the principles and practices of individual, family, and community health.

(g) Physical education, with emphasis upon the physical activities for the pupils that may be conducive to health and vigor of body and mind, for a total period of time of not less than 200 minutes each 10 schooldays, exclusive of recesses and the lunch period.

(h) Other studies that may be prescribed by the governing board.

Areas of study; grades 7 to 12 (inclusive) (Education Code Section 51220)

(a) English, including knowledge of and appreciation for literature, language, and composition, and the skills of reading, listening, and speaking.

(b) Social sciences, drawing upon the disciplines of anthropology, economics, geography, history, political science, psychology, and sociology, designed to fit the maturity of the pupils. Instruction shall provide a foundation for understanding the history, resources, development, and government of California and the United States of America; instruction in our American legal system, the operation of the juvenile and adult criminal justice system, and the rights and duties of citizens under the criminal and civil law and the State and Federal Constitutions; the development of the American economic system including the role of the entrepreneur and labor; man's relations to his human and natural environment; eastern and western cultures and civilizations; human rights issues, with particular attention to the study of the inhumanity of genocide; and contemporary issues.

(c) Foreign language or languages, beginning not later than grade seven, designed to develop a facility for understanding, speaking, reading, and writing the particular language.

(d) Physical education, with emphasis given to such physical activities as may be conducive to health and vigor of body and mind.

(e) Science, including the physical and biological aspects, with emphasis on basic concepts, theories, and processes of scientific investigation and on man's place in ecological systems, and with appropriate applications of the interrelation and interdependence of the sciences.

(f) Mathematics, including instruction designed to develop mathematical understandings, operational skills, and insight into problem-solving procedures.

(g) Fine arts, including art, music, or drama, with emphasis upon development of aesthetic appreciation and skills of creative expression.

(h) Applied arts, including instruction in the areas of consumer and homemaking education, industrial arts, general business education, or general agriculture.

(i) Vocational-technical education designed and conducted for the purpose of preparing youth for gainful employment in such occupations and in such numbers as appropriate to the manpower needs of the state and the community served and relevant to the career desires and needs of the students.

(j) Automobile driver education, as follows:

(1) Automobile driver education, designed to develop a knowledge of the provisions of the Vehicle Code and other laws of this state relating to operation of motor vehicles, a proper acceptance of personal responsibility in traffic, a true appreciation of the causes, seriousness, and consequences of traffic accidents, and to develop the knowledge and attitudes necessary for the safe operation of motor vehicles. A course in automobile driver education shall include education in the safe operation of motorcycles.

(2) A course in automobile driver education shall also include instruction in vehicular air quality control and inspection, the maintenance and functioning of automobile emission control devices, and the applicable federal and state warranties pertaining thereto, the proper handling of gasoline vapor recovery equipment, and vehicle fuel efficiency techniques. This additional instruction shall be conducted within the regular instructional period.

(k) Such other studies as may be prescribed by the governing board.

Automobile driver education; driving while intoxicated (Education Code Section 51220.1)

In addition to the requirements specified in subdivision (j) of Section 51220, automobile driver education shall be designed to develop a knowledge of the dangers involved in consuming alcohol or drugs in connection with operation of a motor vehicle.

Requirements for graduation (Education Code Section 51225.3)

(a) Commencing with the 1988-89 school year, no pupil shall receive a diploma of graduation from high school who, while in grades 9 to 12, inclusive, has not completed all of the following:

(1) At least the following numbers of courses in the subjects specified, each course having a duration of one year, unless otherwise specified.

(A) Three courses in English.

(B) Two courses in mathematics.

(C) Two courses in science, including biological and physical sciences.

(D) Three courses in social studies, including United States history and geography; world history, culture, and geography; a one-semester course in American government and civics; a one-semester course in economics.

(E) One course in visual or performing arts or foreign language. For the purpose of satisfying the requirement specified in this subparagraph, a course in American Sign Language shall be deemed a course in foreign language.

(F) Two courses in physical education, unless the pupil has been exempted pursuant to the provisions of this code.

(2) Such other coursework as the governing board of the school district may by rule specify.

(b) The governing board, with the active involvement of parents, administrators, teachers, and pupils, shall adopt alternative means for students to complete the prescribed course of study which may include practical demonstration of skills and competencies, supervised work experience or other outside school experience, interdisciplinary study, independent study, and credit earned at a postsecondary institution. Requirements for graduation and specified alternative modes for completing the prescribed course of study shall be made available to pupils, parents, and the public.

Appendix F
Register of Daily Attendance

(Make all entries in black ink.) School district

Teacher

Calendar month 19

School days open

Nonpublic school

Please check one:

☐ Basic Educational Program

☐ Related Services: _____

Basic Educational Program

Related Services

Name (List alphabetically.) Last First	Dates																				Total days attendance	Total minutes served	Check if secondary
	Monday	Tuesday	Wednesday	Thursday	Friday	Monday	Tuesday	Wednesday	Thursday	Friday	Monday	Tuesday	Wednesday	Thursday	Friday	Monday	Tuesday	Wednesday	Thursday	Friday			

Contractor shall keep attendance of each pupil daily and shall report attendance monthly on this form to the district. Submit one (1) copy to each district. Written documentation of any absences (i.e., note from parent on illness or staff member's summary of telephone contact) shall be maintained for audit.

INSTRUCTIONS FOR RECORDING ATTENDANCE:

1. All entries must be in black ink and be legible. Corrections are to be clearly indicated. All entries should be in alphabetical order, listing last name first.

2. Symbols to use:

   a. Basic daily attendance:

      (1) Pupil present: 100 is recorded each day
      (2) Excused illness absence: 100 is recorded and circled

   b. Related Service:

      (1) Pupil present: Number of minutes of instruction recorded (i.e., 15, 30, 60)
      (2) Excused illness absence: Number of minutes of instruction recorded and circled.

   c. Holiday: H is recorded

   d. Unexcused absence: A is recorded

   e. Entering/Leaving student: E to represent first day of attendance*
      L to represent last day of attendance

3. Definition of Excused Illness Absence (Education Code 46010)

   a. Student's illness
   b. Quarantine under the direction of a county or city health office
   c. For purposes of having medical, dental, optometrical, or chiropractic services rendered
   d. For purposes of attending funeral services of a member of student's immediate family
   e. For purposes of jury duty in the manner provided for by law
   f. Exclusion from school for lack of proper immunization (Health and Safety Code Section 3381) for not more than 5 days

*When entering a pupil during the month, leave several lines in the name column to indicate new enrollee during month (out of alphabetical order). On the next month's report, rearrange all names in alphabetical order.

Office of Special Education
Revised 4/90

Appendix G
Invoice
Nonpublic School/Agency

charges for the month of _____ 19 _____

To the Governing Board of: _____

From: _____
Name of Nonpublic School or Agency

_____ _____
Street address Contact person

( )
_____ Area Code _____
City State ZIP code Telephone

	Name of pupil (List alphabetically.) Last First	(1) Contract unit rate	(2) Total creditable days	(3) Amount billed to district
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				
11.				
12.				
13.				
14.				
15.				
			Total	

The signature of a nonpublic school/agency official certifies under penalty of perjury that the above information is true and correct.

Approved for payment by:

_____ _____
Signature of Nonpublic School/Agency Official District Representative Date

_____ _____
Title Date

Board Authorization (For District Use Only)

INSTRUCTIONS

Complete and submit one (1) copy of this invoice every month for each school district. List all students from the district in alphabetical order, with last name listed first.

(1) Contract Unit Rate—Column 1: The rate is defined in Item 26 of the Master Contract: "A unit of service for payment purposes is one day of attendance or excused absence as defined in Education Code Section 46010," and in Item 3 of the Individual Services Contract.

(2) Total Creditable Days—Column 2: Creditable days are the total number of days of attendance, including days of excused absence (as specified in Item 21 of the Master Contract) as permitted by state law, and are those reported on the monthly "Register of Daily Attendance." The maximum number of days/minutes authorized for the contract year are specified in Item 2 of the Individual Services Contract.

(3) Amount Billed to District—Column 3: The amount is calculated by multiplying Column 1 by Column 2.

CALIFORNIA STATE DEPARTMENT OF EDUCATION
721 Capitol Mall: P.O. Box 944272
Sacramento, CA 94244-2720

Bill Honig
Superintendent
of Public Instruction

Notice of
NONPUBLIC SCHOOL CERTIFICATION
1989-90

NAME OF SCHOOL _____

SITE _____

CITY _____

( ) State Certification is approved

( ) State Certification - Conditional Status

EFFECTIVE DATES
From:
To:

This notice verifies authorization for contracting under the provisions of Section 56366 et seq. of the Education Code when Certification is checked "approved" or "conditional."

The next Onsite Review for this program is due not later than _____

NOTE: CERTIFICATION IMPLIES ONLY THAT THE NONPUBLIC SCHOOL MEETS MINIMAL STANDARDS AND IS NOT AN ENDORSEMENT OF THE SERVICES OFFERED.

Paul Starkovich, Consultant
Field Services, North Unit
Special Education Division
(916) 445-0777

Date issued: _____

APPENDIX I

CALIFORNIA STATE DEPARTMENT OF EDUCATION
721 Capitol Mall: P.O. Box 944272
Sacramento, CA 94244-2720

Bill Honig
Superintendent
of Public Instruction

TO: DATE:

FROM: Allen G. Coltharp, Consultant
Field Services North
Special Education Division
(916) 323-4760

Effective Dates
FROM:
TO:

RE: CERTIFICATION STATUS

_____
Approval Signature

This notice provides you with the current status of your application for certification as a nonpublic agency.

( ) State Certification is approved.* ( ) New

( ) Certification is pending receipt of the checked items. (Please return a copy of this memo with your reply.) ( ) Renewal

( ) Fire Clearance (required annually)
( ) Health Clearance to _____
( ) Safety Clearance to _____
( ) Affirmation of Secular Status
( ) Combined Statement of Assurances
( ) Civil Rights Compliance Assurances
( ) Licenses (copies)
( ) Tuberculosis Clearances (copies showing negative findings)
( ) $65 Processing Fee
( ) Other _____

AGENCY SERVICES AUTHORIZED:

(1) _____
(2) _____
(3) _____
(4) _____

*NOTE: CERTIFICATION IMPLIES ONLY THAT THE AGENCY MEETS MINIMAL STANDARDS AND IS NOT ENDORSEMENT OF THE SERVICES OFFERED.

APPENDIX J

California State Department of Education
Special Education Division
Nonpublic Schools/Agencies Certification
SED-01D (Rev. 10/89)

Department Use Only
Date Rec'd: _____
If approved effective from: _____ to: _____
Not approved: date returned: _____

JUSTIFICATION TO ACCOMPANY REQUEST FOR WAIVER OF NONPUBLIC SCHOOLS/AGENCIES (NPS/A) CERTIFICATION
Education Code Section 56366.1

Date of Request _____ School Year _____

Name of County _____ Name of District _____

Name of SELPA _____ Name of NPS/A _____

Address _____ Phone # _____

1. Education Code Section(s): _____ Title 5 CCR Section(s): _____
2. Reason for waiver request: (Explain the services needed and why such services cannot be provided in the SELPA.):
3. Name of student(s) in need of service.
4. List Certified schools/agencies which have been contacted for placement and why each has been unable to provide the services.
5. Name and address of noncertified school or agency to provide services.
6. Describe why this school or agency is appropriate to provide the needed services.
7. How does the local education agency plan to monitor the provision of service(s) to pupils?

8. If reason for waiver request is because staff lacks proper credentials, describe qualifications of existing staff that would provide services to named student(s).

9. Attach either (a) a completed nonpublic school application for determination of qualifications for certification or need for waiver; or (b) all the documents listed on the reverse of this page.

A request for waiver will be considered if the nonpublic school/agency submits documentation showing:

1. Fire clearance valid within past 12 months.

2. Health clearance valid within past 36 months.

3. Structural safety clearance valid within past 36 months.

4. Qualified staff (unless 8 above has been completed).

5. Tuberculosis clearance on all staff having contact with contracted pupils.

6. Written agreement from the nonpublic school/agency to allow the local educational agency to monitor periodically the provision of services to contracted pupils.

7. Required Affirmations and Assurances. The nonpublic school/agency shall file the following documents (see application packet) to verify compliance with:

   1) Civil Rights Act of 1964, Title VI [45 U.S.C. 2000 (d)].

   2) Public Law 94-142 [20 U.S.C. 1401 et seq.].

   3) A copy of the current private school affidavit (applicable only to schools).

   4) An affirmation of secular status.

APPENDIX K

BUTTERFIELD v. *HONIG* SETTLEMENT BY FEDERAL DISTRICT COURT CONSENT DECREE

CALIFORNIA STATE DEPARTMENT OF EDUCATION
721 Capitol Mall; P.O. Box 944272
Sacramento, CA 94244-2720

Bill Honig
Superintendent
of Public Instruction

July 12, 1989

All Special Education
Directors in Los Angeles
County

Re: Impact of the Butterfield litigation and Consent Decree

Dear Director:

This is to notify you that the Butterfield case has settled. The settlement is called a Consent Decree and you are all affected by it.

Although your district may not have been named as a defendant in the lawsuit, its resolution does have a bearing on all L.A. County school districts for two reasons: (1) This is a class action on behalf of all special education pupils in L.A. County who are or may be eligible to receive services from Los Angeles County Mental Health (LMH), and (2) LMH's procedures have changed pursuant to the Consent Decree and those changes apply to every LEA with whom it does business.

The enclosed documents will be your primary source references. The NOTICE OF SETTLEMENT is a short description of the above-mentioned procedural changes. You may want to review it before wading through the Consent Decree.

It is my understanding that the SDE's Special Education Division will be scheduling a meeting somewhere in L.A. County, sometime next month, at which time we will respond to all of your questions.

If you have any questions during the interim, please call the Service Assurance/Compliance unit (Dr. Clyde Chantry) at 916-323-4742.

Sincerely,

Barry Zolotar

BARRY ZOLOTAR
Staff Counsel

NOTICE OF SETTLEMENT

A settlement has been reached in the case Butterfield et al v. Honig et al., a class action, which requires that special education mental health services, including assessments, psychotherapy and other outpatient services, and residential services, be provided in a timely fashion to students eligible for special education. The settlement, which will remain in effect until August 31, 1992, requires the following:

A. Mental Health Assessments Shall Be Completed Within the Legal Timelines.

1. An Individualized Education Plan (IEP) meeting shall be scheduled by the school district within 60-70 days of the date that the parents consent to the release of records to Los Angeles County Department of Mental Health (LACDMH).

2. Within one day of the parents consent to the release of records, the school district shall forward the referral to LACDMH.

3. Within 15 days of receiving the consent and documentation from the school district, LACDMH shall

   a. determine if an assessment is necessary and

   b. if so, provide an assessment plan to the parents for signature.

4. No later than 20 days prior to the scheduled IEP meeting, LACDMH shall determine whether or not the assessment will be completed in time for the meeting. If not, no later than 20 days prior to the scheduled IEP meeting, LACDMH shall notify the school district which will arrange for an assessment by a private mental health professional/agency from an approved list submitted by LACDMH. The assessment shall be completed prior to the IEP meeting.

5. If LACDMH determines that a referral is inappropriate, LACDMH shall immediately notify the school district as to the reasons why the referral is inappropriate. The school district shall hold an IEP meeting within 15 days of receipt of such notification by LACDMH. The IEP team shall notify the parents that LACDMH found the referral inappropriate. If the IEP team agrees with the determination by LACDMH that the referral is not appropriate the LEA shall notify the parent of the right to appeal.

B. Residential Services Shall Be Provided In A Timely Fashion

1. An expanded IEP team meeting shall be held within 15 days of the date that any member of an IEP team recommends residential placement for a special education student identified as seriously emotionally disturbed (SED).

2. Prior to attending an expanded IEP meeting, the LACDMH representative shall review the case file and if deemed necessary, shall contact the school district, the parent and the pupil.

3. If, at the expanded IEP team meeting, the LACDMH determines that additional assessments are necessary, they shall proceed with the provisions set out above.

EXHIBIT A

4. LACDMH shall finalize the pupil placement plan within 15 days of the date of the expanded IEP team's decision to place the pupil in a residential facility.

5. Whenever LACDMH is unable to place the pupil within 15 days of finalizing the pupil placement plan, LACDMH shall notify the responsible school district and the State Department of Education (SDE). Such notification shall state in writing the efforts by LACDMH to locate a residential placement, including facilities contacted and reasons for their inability to accept the pupil for placement.

6. If within 15 days after notification by LACDMH, the SDE or the school district is unable, with LACDMH, to locate an appropriate placement which is willing to accept the pupil, the SDE shall immediately take steps to resolve the problem.

7. If an appropriate residential placement, identified by the school district and/or LACDMH, accepts the pupil and LACDMH fails to make the placement, the school district shall make the placement and LACDMH shall be responsible for authorizing payment of the State approved rate for the residential costs.

C. Psychotherapy And Other Mental Health Services Shall Be Provided In A Timely Fashion

1. LACDMH shall commence the psychotherapy and/or other mental health services as designated on the IEP within 15 days of the IEP decision.

2. Whenever LACDMH is unable to timely commence these services, LACDMH shall notify the responsible school district, specifying in writing the facilities contacted and reasons for their inability to accept the pupil for services. The school district shall attempt to locate appropriate services.

3. If, within 15 days after notification by LACDMH, the LACDMH and school district are unable to locate the appropriate psychotherapy and/or mental health services willing to accept the pupil, the school shall notify the SDE. The SDE shall immediately take steps to resolve the problem.

4. When LACDMH is unable to provide services and the school district identifies a qualified provider, and if upon request LACDMH does not assume responsibility for costs of the provider, the school district shall arrange for the services.

D. The SDE Is Responsible For Assuring That Provisions Of The EHA Are Carried Out.

1. The SDE will meet its responsibility by monitoring, investigating complaints, enforcing corrective actions and by providing services directly, when necessary.

E. Information Regarding The Settlement May Be Obtained By Contacting The Following Attorneys For The Plaintiffs And Class Members.

Mental Health Advocacy Services, Inc.
650 South Spring Street, Suite 807
Los Angeles, CA 90014
(213) 623-1419

Protection and Advocacy, Inc.
230 North Maryland Ave., Suite 107
Glendale, CA 91206
(818) 546-1631

NANCY M. SHEA
JAMES PREIS
Mental Health Advocacy Services, Inc.
650 South Spring Street, Suite 807
Los Angeles, California 90014
(213) 623-1419

CATHERINE BLAKEMORE
Protection & Advocacy Services, Inc.
230 North Maryland Avenue, Suite 107
Glendale, California 91206
(818) 546-1631

VALERIE VANAMAN
Newman, Aaronson, Krekorian & Vanaman
14001 Ventura Boulevard
Sherman Oaks, California 91423
(818) 990-7722

Attorneys for Plaintiffs
(Attorneys for Defendants listed on Page 3)

FILED
MAY 15 1989
CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

JASON BUTTERFIELD; et al., on behalf of themselves and all others similarly situated, Plaintiffs, v. BILL HONIG, in his official capacity as State Superintendent of Public Instruction; et al., Defendants.	88 02355 RG (KX) CONSENT DECREE

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BILL HONIG, in his official capacity as State Superintendent of Public Instruction; et al.,

Cross-Claimants,

v.

CALIFORNIA HEALTH AND WELFARE AGENCY; et al.

Cross-Defendants.

LOS ANGELES UNIFIED SCHOOL DISTRICT,

Cross-Claimants,

v.

CALIFORNIA STATE DEPARTMENT OF EDUCATION, et al.,

Cross-Defendants.

NORWALK-LA MIRADA UNIFIED SCHOOL DISTRICT,

Cross-Claimant,

v.

BILL HONIG, in his official capacity as State Superintendent of Public Instruction; et al.,

Cross-Defendants.

COUNTY OF LOS ANGELES, et al.,

Cross-Claimants,

v.

BILL HONIG, in his official capacity as State Superintendent of Public Instruction; et al.,

Cross-Defendants.

/

/

/

DE WITT W. CLINTON, County Counsel
ROBERTA M. FESLER, Assistant County Counsel
LEELA A. KAPUR, Senior Associate County Counsel
648 Hall of Administration
500 West Temple Street
Los Angeles, California 90012
(213) 974-1827

Attorneys for Defendants and Cross-Claimants County of Los Angeles, Board of Supervisors, and Roberto Quiroz

JOSEPH R. SYMKOWICK, General Counsel
BARRY ZOLOTAR, Staff Counsel
JOYCE O. ECKREM, Staff Counsel
California Department of Education
721 Capital Mall
P.O. Box 944272
Sacramento, California 94244-2720
(916) 445-4694

Attorneys for Defendants and Cross-Claimants Bill Honig and California Department of Education

RON APPERSON, Legal Advisor
HOWARD FRIEDMAN, Assistant Legal Advisor
Office of the Legal Advisor
Los Angeles Unified School District
1450 North Grand Avenue, Room A-339
Los Angeles, California 90012
(213) 625-6606

Attorneys for Defendant and Cross-Claimant Los Angeles Unifed School District

DIANA K. SMITH
LYNNE KELLY
Lozano, Smith, Smith & Woliver
901 "E" Street, Suite 250
San Rafael, California 94901
(415) 459-3008

Attorneys for Defendant and Cross-Claimant Norwalk La-Mirada Unified School District

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ARTICLE I

This action was filed by plaintiffs on April 27, 1988 and an amended complaint was filed on May 10, 1988 alleging failure by the defendants to provide plaintiffs with a free appropriate public education as guaranteed by the Education of the Handicapped Act, 20 U.S.C. section 1400 et seq.; the Rehabilitation Act of 1973, as amended, 29 U.S.C. section 794 and section 794a (section 504); and 42 U.S.C. section 1983. Plaintiffs alleged that mental health assessments were not being conducted within the statutory time periods; that residential placements and related mental health services were not being provided as required; that required interagency agreements at the local level and effective State regulations had not been developed as required; and that the State Educational Agency had failed to develop an effective monitoring and enforcement system for assuring the provision of mental health services pursuant to Government Code sections 7570 et seq. and had failed to provide services directly, when necessary as required by 20 U.S.C. §1412 and §1414(d). Plaintiffs brought this action on behalf of a class of handicapped pupils similarly situated in Los Angeles County. Plaintiffs sought declaratory and injunctive relief and an award of costs, disbursements and reasonable attorneys' fees.

/

Each of the named defendants filed timely answers, generally denying responsibility for the alleged failures. The Superintendent of Public Instruction and the State Department of Education filed a cross-claim against State and County Mental Health defendants seeking declaratory and injunctive relief and indemnity pursuant to Fed. R. Civ. P. 13(g). The local school district defendants filed cross-claims against the State defendants and County Mental Health defendants seeking indemnity and other relief. County Mental Health defendants filed cross-claims against the State defendants and Los Angeles Unified School District seeking indemnity and declaratory relief.

On September 19, 1988 with no opposition by the Defendants, the Court certified a class consisting of:

> "all handicapped individuals ages birth to 22 years, living in Los Angeles County and entitled to an education under the Education of the Handicapped Act (EHA), 20 U.S.C. §§1400 et seq., who have been or will be referred to Los Angeles County Department of Mental Health for mental health services, including assessments, outpatient programs and residential care, pursuant to the provisions of California Government Code §§7570 et seq.; and whose rights and benefits under the EHA have been or will be

denied by Defendants' refusal to comply with the requirements of the EHA."

The parties to this settlement are the five individual plaintiffs, the two organizational plaintiffs and the Class members (hereinafter Plaintiffs), Bill Honig, in his official capacity as Superintendent of Public Instruction and the California State Department of Education (hereinafter "SDE"), Los Angeles Unified School District and Norwalk-La Mirada Unified School District (hereinafter LEAs), and the County of Los Angeles, Board of Supervisors of the County of Los Angeles, and Roberto Quiroz, in his official capacity as Director of Los Angeles County Department of Mental Health (hereinafter LACDMH). These parties recognize the difficulties in resolving the complex issues raised by the actions herein. Desiring to avoid the costs and delays of protracted litigation, these parties have therefore consented to the entry of this decree as a full settlement of the Complaint and Cross-claims filed herein as between these parties. This decree is not intended to effectuate a settlement between any of these parties and the California Department of Mental Health, D. Michael O'Conner, the California Health and Welfare Agency or Clifford Allenby.

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ARTICLE II

The parties to this settlement agree to settle the issues raised by this litigation with prejudice to the claims which are set forth in Article I above and which precede the entry of this decree; except that this settlement shall not affect the rights of the parties, including class members, with respect to any future claims, or the rights of individual plaintiffs in the event that this settlement does not provide them with the related mental health services which they have sought in this action. Nor shall this settlement affect the rights of any of the parties in their complaint or cross claim against the California Department of Mental Health, D. Michael O'Conner, the California Health and Welfare Agency or Clifford Allenby. Parties are agreed that their assent to this decree shall not be construed as admission of any allegations set forth in the Complaint, First Amended Complaint, Cross-claim(s) or any other pleading filed herein.

ARTICLE III

The parties agree that, pursuant to 20 U.S.C. section 1412(6) and Government Code section 7570, the SDE is responsible for assuring that provisions of the Education

for the Handicapped Act are carried out, and that all special educational programs, related services, and related residential placements will be under the general supervision of the Superintendent of Public Instruction. These programs include all mental health assessments, psychotherapy and related mental health services, delivered by LACDMH under regulations and guidelines promulgated by the State Department of Mental Health (SDMH), which allocates funds for the aforementioned services. All parties shall abide by the state standards established in relevant state laws and regulations governing such programs and services. The Superintendent of Public Instruction shall meet this obligation through monitoring, investigating complaints, enforcing corrective actions and by providing services directly, when necessary, in accordance with 20 U.S.C. §§1412 and 1414(d). (See: Doe by Gonzales v. Maher (9th Cir. 1986) 793 F.2d 1471 aff'd Honig v. Doe (1988) _____ U.S. _____, 108 S.Ct. 592).

The SDE shall investigate directly all non-compliance complaints filed in accordance with Title 5, CCR, section 3081 regarding mental health services required to be delivered pursuant to Government Code section 7570 et seq. Where non-compliance is found, the SDE shall develop a corrective action order which shall be implemented by the appropriate agency within the time specified in such order, pursuant to 5 C.C.R. 3081. The SDE shall take appropriate

steps to enforce the corrective action order if the orders are not implemented by the appropriate agency by the date specified in the corrective action order and shall provide services directly, when necessary, in accordance with 20 U.S.C. §1412 and §1414(d). (See: Doe by Gonzales v. Maher aff'd Honig v. Doe, supra). Furthermore, the SDE will notify the Court of any corrective action orders that are not implemented by the appropriate agency to which such order is directed, within 15 calendar days after the date specified in the corrective action order.

ARTICLE IV

The parties agree that the terms of this decree shall govern implementation of sections 7570 et seq. of the California Government Code with respect to the delivery of mental health services, including assessments, psychotherapy and other related mental health services, and related residential placement, to students eligible for such services in Los Angeles County. The parties agree that the terms of this decree shall be controlling from the date of entry through August 31, 1992, except that LACDMH shall have 30 days following the entry of this decree to enter into contracts/agreements with qualified professionals and provide local educational agencies with a

list of contractors, as specified in Article V of this decree.

In the event that there is any change in applicable law which would affect the terms of this agreement, any party may demand a meeting within 15 days, with the other parties, to re-negotiate this agreement. If the parties are unable to satisfactorily resolve any issues which have arisen from the change in law, any party may petition the Court for modification or rescission of this Consent decree. During this process the terms of the agreement shall remain in effect.

ARTICLE V

A. When the individualized education plan (IEP) team, or the LEA initiates a referral to LACDMH for an assessment for mental health services, the LEA shall have the parents sign an LEA approved consent form for release of records and observation, and propose a date for an IEP meeting. A tentative IEP meeting date shall be set between 60 and 70 days from the date of the parents' consent to release records. Nothing in this provision shall preclude the LEA from scheduling an earlier IEP meeting if LACDMH notifies the LEA that the assessment has been completed or that no assessment is necessary. The LEA shall mail the executed parent consent form, and the required documentation

pursuant to section 60040(c)(1) of Title 2 of the California Code of Regulations, to LACDMH within one day of receipt.

B. Within 15 days following the receipt of said consent and documentation, the LACDMH shall determine whether an assessment is necessary and if so, provide an assessment plan to the parents for signature. If LACDMH is unable to complete the assessment, LACDMH shall immediately notify the LEA, but in no event later than 20 days prior to the scheduled IEP meeting. The LEA shall promptly arrange for a private mental health professional/agency from an approved list submitted by LACDMH to complete the assessment under LACDMH contract. LACDMH agrees to enter into contracts/agreements with mental health professionals/agencies. LACDMH will submit said list to LEA. LACDMH shall remain responsible for timely completion of all mental health assessments. The mental health assessments shall be completed within the legal timelines.

C. If LACDMH determines that a referral is inappropriate, LACDMH shall immediately notify the LEA by telephone and in writing as to the reasons why the referral is inappropriate. The LEA shall hold an IEP meeting within 15 days of receipt of such notification by LACDMH. The IEP team shall notify the parents that LACDMH found the referral inappropriate. If the IEP team agrees with the determination by LACDMH that the referral is not

appropriate, the LEA shall notify the parent of the right to appeal. Nothing in this provision shall preclude the LEA from conducting a mental health assessment pursuant to the procedures contained in the Education Code §§56320 et seq.

ARTICLE VI

A. An expanded IEP team meeting shall be held within 15 days of the date that any member of an IEP team recommends residential placement for a special education student identified as seriously emotionally disturbed (SED) pursuant to 34 C.F.R. 300.5(b)(8). Prior to attending an expanded IEP meeting, the LACDMH representative shall review the case file and if deemed necessary, shall contact the LEA, parent and pupil. If, at the expanded IEP team meeting, the LACDMH determines that additional assessments are necessary, they shall proceed with the provisions set out in Article V above. LACDMH shall finalize the pupil placement plan within 15 days of the date of the expanded IEP team's decision to place the pupil in a residential facility. Whenever LACDMH is unable to place the pupil within 15 days of finalizing the pupil placement plan, LACDMH shall notify the responsible LEA and the SDE. Such notification shall state in writing the efforts by LACDMH to locate a residential placement, including facilities

contacted and reasons for their inability to accept the pupil for placement. If, within 15 days after notification by LACDMH, the SDE or LEA is unable, with LACDMH, to locate an appropriate placement which is willing to accept the pupil, the SDE shall immediately take steps to resolve the problem. The SDE shall notify plaintiffs' counsel of the aforementioned efforts.

B. If an appropriate residential placement facility identified by the LEA and/or LACDMH accepts the pupil and LACDMH fails to effectuate the placement, the LEA shall make the placement and LACDMH shall be responsible for authorizing payment of the State approved rate for the residential costs. If there is a dispute regarding the statutory responsibility to pay, including any costs in excess of the State approved rate, it will be decided through the dispute resolution procedures of Government Code section 7585.

C. SDE shall conduct a study of the availability of residential resources for class members. This study shall be completed by January 1, 1991.

ARTICLE VII

A. Within 15 days of the IEP decision, LACDMH shall commence the psychotherapy and/or other mental health services as designated on the IEP. Whenever LACDMH is

unable to timely commence these services, LACDMH shall notify the responsible LEA, specifying in writing the facilities contacted and reasons for their inability to accept the pupil for services. The LEA shall attempt to locate appropriate services. If, within 15 days after notification by LACDMH, the LACDMH and LEA are unable to locate the appropriate psychotherapy and/or mental health services willing to accept the pupil, the LEA shall notify the SDE. The SDE shall immediately take steps to resolve the problem. The SDE shall notify the plaintiffs' counsel of the aforementioned efforts.

B. When the LACDMH is unable to provide services pursuant to subparagraph A, and the LEA identifies a qualified provider, and if upon request LACDMH does not assume responsibility for costs of the provider, the LEA shall arrange for the services and shall initiate notice pursuant to Government Code §7585. The SDE shall ensure that the service is provided in accordance with Government Code §7585(f).

ARTICLE VIII

In developing permanent regulations to implement the law relating to interagency responsibilities for providing services to handicapped children (pursuant to Government Code §§7570 et seq.) the SDE shall consider the terms of

this settlement agreement and on or before July 1, 1989, shall promulgate such regulations as may be necessary to ensure that assessments, services, placement and enforcement are provided in a manner that is consistent with state and federal laws and regulations.

ARTICLE IX

Three months after the entry of this decree and monthly thereafter for a period of six months, the SDE shall prepare, and file with the court, a report on the following: (1) the number of referrals made to LACDMH pursuant to Government Code sections 7570 et seq.; (2) the number of such referrals completed within the statutory timelines; and (3) the number of complaints, and the disposition thereof that have been filed which allege failure to provide mental health assessments, related services and/or residential placement within statutory timelines. Thereafter, such reports shall be prepared and filed with the court on a quarterly basis through August 31, 1992. Local party defendants shall cooperate with the SDE in the accumulation of data necessary for the preparation of said reports.

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ARTICLE X

Plaintiffs waive any and all claims to monetary damages.

ARTICLE XI

The parties agree that this decree shall become effective upon final approval by the court and shall remain in effect until August 31, 1992.

ARTICLE XII

Notice to all class members of the terms of this consent decree shall be the responsibility of LACDMH, except that LEAs shall be responsible for providing notice to all future members of the class in their respective districts at the time that the class member is referred to LACDMH for assessment and services. A copy of the notice is attached hereto as Exhibit A.

Within 30 days of the entry of this decree the SDE shall advise all local education agencies located within Los Angeles County and the Los Angeles County Superintendent of Schools of the terms of this agreement.

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ARTICLE XIII

The parties further agree that, pursuant to the powers vested in the court by Fed. R. Civ. P. 65, the court shall retain jurisdiction of these actions for the purpose of issuing such orders as may be required to give effect to this decree.

ARTICLE XIV

It is the intent of this decree to implement the existing provisions of Government Code sections 7570 et seq.

ARTICLE XV

This decree may be executed in counterpart.

ARTICLE XVI

The parties agree that the sum of $90,000.00 is reasonable compensation for plaintiffs' attorneys fees.

Plaintiffs shall not be entitled to an award of attorneys' fees for the normal monitoring of this decree. Plaintiffs shall be entitled to attorneys' fees for work

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done on enforcing this decree where they are the prevailing party in court enforcement proceedings.

The parties additionally agree that the Court may issue an order providing as follows: That the defendants shall pay an attorneys fee award of $90,000 to plaintiffs. It is further agreed that defendants Los Angeles Unified School District and Norwalk-La Mirada Unified School District will pay 25 percent of the total amount ($15,000 from Los Angeles Unified School District and $7,500 from Norwalk-La Mirada Unified School District) and defendant Los Angeles County Mental Health will pay 40 percent ($36,000). The State Superintendent of Public Instruction agrees that 35 percent ($31,500) is a reasonable amount and such amount will be paid subject to the order of the Court.

Respectfully Submitted,

DATED: 5-11-89

MENTAL HEALTH ADVOCACY SERVICES, INC.
Nancy M. Shea
James Preis

PROTECTION AND ADVOCACY, INC.
Catherine Blakemore

VALERIE VANAMAN

BY _____
Nancy M. Shea
Attorneys for Plaintiffs

DATED:

NORWALK- LA MIRADA UNIFIED SCHOOL DISRTICT

BY: _____
Dr. Bruce Newlin
Superintendent

/

DATED: 4/26/89

LOS ANGELES UNIFIED SCHOOL DISTRICT

BY _____
Phillip Callison
Assistant Superintendent Division
of Special Education

DATED: 4 27 89

DE WITT W. CLINTON, County Counsel
ROBERTA M. FESLER, Asst. County Counsel

BY _____
Leela A. Kapur
Senior Associate County Counsel
Attorneys for Defendants County of
Los Angeles, Board of Supervisors
and Roberto Quiroz

DATED: 4-17-89

JOSEPH R. SYMKOWICK, General Counsel
JOYCE O. ECKREM, Staff Counsel
BARRY ZOLOTAR, Staff Counsel

BY _____
Attorneys for Defendants Honig and
California Department of Education

IT IS SO ORDERED.

DATED May 15 1989

RICHARD A. BAUBOYS, JR.

UNITED STATES DISTRICT JUDGE

State of California

Department of Education

Memorandum

To: Special Education Division Staff
Special Education Local Plan Area Administrators
Special Education Administrators of County Offices

Date: June 16, 1989

File No.:

From: Patrick Campbell
Assistant Superintendent/Director
Special Education Division

Subject: Chapter 26.5 (AB 3632)

The attached questions and answers are sent to you for your information. The format and content were developed together by the Departments of Mental Health, Social Services, and Education in reponse to questions and a need for clarification which arose from the County Mental Health Coordinators and was directed to the State Department of Mental Health.

This information is being distributed to County Mental Health Departments as well as the local education agencies.

1. *How can local mental health implement an individualized education program when there are uncooperative students and/or guardians?*

   a. Parents will not participate with therapy.
   b. Student refuses to go.

   Answer: Local mental health providers can develop alternative plans and intervention strategies for parents or students who are undermining placement or treatment services. The IEP has been signed by the parent and/or guardian and represents a voluntary educational program. Parents and/or the student may decide that they do not require services or that they are uncomfortable with the provider.

   In extreme circumstances there may be grounds for child protective services (CPS) intervention. This would require documentation of severe medical or emotional neglect over time.

2. *Issue: Out-of-county transfers.*

   a. What is the procedure for transition of services when a child receives mental health services through an Individualized Education Program (IEP), then moves to a new county with no new IEP?

   Answer: Whenever a pupil changes his/her educational placement (new type of program or new school district), the administrator may place the pupil in a comparable program for thirty (30) days. This service is provided as prescribed in the existing IEP. This placement shall be reviewed by the Individualized Education Program team and a final recommendation made relative to the Individualized Education Program and the placement. If an Individualized Education Program needs to be rewritten, it must be completed within the thirty (30) day administrative placement. The existing IEP stands until a new IEP is developed.

   b. How can out-of-home placement be maintained so there is no disruption when guardians move?

   Answer: When a pupil is placed in a nonpublic school by the local education agency (LEA) and the parent moves into another district, the new local education agency has several options relative to the placement of the pupil:

   (1) The new LEA may ask that the pupil return to the district. This would be an option if the district has a comparable public school program that can meet the pupil's needs for services as identified in the pupil's individualized education program;

   (2) The LEA may leave the pupil at the NPS or agency if
   - there is no appropriate public education program available;
   - to move the individual at the time of the change of residence would be harmful to the health, welfare, or educational progress of the individual;
   - other contingencies exist which necessitate the individual remaining at the NPS, as determined by the expanded individualized education program team (CCR 3067(c) and (d)).

3. *What can local mental health do when a school district/board refuses to approve an NPS contract?*

   Answer: Local mental health must find an alternative placement which is acceptable to the local school district's board of education. No placement can occur without school district/board approval. The following is the process which must be followed pursuant to *Education Code* Section 56342: Each NPS placement must be submitted to the local governing board of the district, SELPA, or county office for review and recommendations regarding the cost of such placement. Any recommendations of the board shall be considered by the expanded IEP team at a meeting which is held within five days of the board's review. Any NPS contract exceeding $20,000 must be submitted to the Superintendent of Public Instruction for approval. Local mental health must make the best case possible for the NPS placement by documenting the need and negotiating with the LEA for agreement on the NPS contract.

4. *What can local mental health do when approval takes too long and placement is lost?*

   Answer: The approval process is mandatory. However, *Education Code* Section 56342 states that a period not to exceed 15 additional days beyond the time limit for developing an IEP may be used for the local governing board to meet its review and recommendation requirements. If a local board meets only once a month or every other month, some type of arrangements can be made for an emergency meeting to review the IEP.

   This may not be difficult since such reviews are usually open only to board members, appropriate staff, and the parent or representative.

   If the placement is lost due to the approval process, it will be necessary to reopen the search process and locate another facility. Local mental health may choose to file an interagency compliance complaint if it is finding substantive barriers to service delivery on the part of the LEA.

5. *What can local mental health do when school districts will not approve SED placement, thereby preventing residential placement?*

   Answer: At the IEP meeting, the local mental health must present its best case for the residential treatment plan, based on the mental health assessment and the school records. If the school district does not approve the service plan, then the local mental health cannot move ahead with any type of placement. Another placement which is acceptable to the school district must be located or an alternative plan of mental health services for the IEP.

6. *Who has responsibility to make an AB 3632 out-of-home placement when there is probation, CPS, or regional center involvement?*

   Answer: The local education agency and county mental health are responsible to jointly assess a child for an educational AB 3632 placement. Probation, welfare, or regional centers have primary case management responsibility when the child is a ward or dependent of the court or is a youngster with a developmental disability. This responsibility includes placing children in residential treatment facilities when they are placed for reasons other than education. The IEP team has the only responsibility for placement when the placement is pursuant to an expanded IEP and for educational purposes.

   AB 3632 out-of-home care placements are made only for those pupils that are certified by the IEP team to be seriously emotionally disturbed (SED). The expanded IEP team must assure that every combination of education and mental health services have been

considered prior to placing a pupil out of home. When a pupil is to be placed, it must be done in concert with the school district.

The school district must ascertain first that the facility that is being considered for the placement can implement the pupil's IEP.

Mental health is responsible for ensuring that the appropriate treatment services listed in the IEP can be provided. Local social service departments may assist by helping locate the appropriate facility—not only through their book on licensed group homes and foster homes in the county but also those placement facilities that are adjacent to the county.

7. *What can local mental health do to implement an IEP when there are uncooperative/ nonsupportive guardians?*

   a. What can be done for the pupil when the guardians sign the IEP but then don't want to place the child?

Answer: The *Education Code* states " . . . that if the parent does not consent to all the components of the IEP, then those components of the program to which the parent has consented may be implemented so as not to delay providing instruction and service to the pupil. Components to which the parent has not consented may become the basis for a due process hearing . . . " (E.C. § 56346)

   b. What can be done for the pupil when the guardians sign the IEP and are too restrictive with expectations for placement?

Answer: The regulations require that the parents and staff from both the education agency and mental health agency identify a nonpublic school or facility with a nonpublic day school that can implement the pupil's goals and objectives as indicated on the individualized education program. This placement should be within or adjacent to the county of residence whenever possible. The regulations require that one or more appropriate, least restrictive, and least costly residential placement alternatives be identified. If the parent refuses the placement options, the parent may file for a due process hearing.

8. *What determines the district of residence?*

Answer: Mental health and education define "residence" differently. Using education's definition, if a pupil is originally from Tulare County and is placed in Santa Cruz County for reasons other than education, the pupil's residence is Santa Cruz County.

Mental health refers to residence as the county of origin. So in mental health terms, Tulare County is the county of residence and Santa Cruz County is the host county.

When a child is placed for education reasons, pursuant to an IEP, the originating SELPA and LMH maintains responsibility.

9. *What are mental health's obligations in doing an exhaustive search before turning the pupil back to the school district to place?*

The exhaustive search for placement must be well documented and done in concert with or reviewed by the local education agency. the child is first of all being placed because of educational needs and, secondly, because of mental health treatment needs.

Both education and mental health have a responsibility to find the appropriate placement. Though social services is not listed as an active participant in the emergency regulations,

they are available for consultation and assistance. Counties should utilize the resources of the local social service department so that education and mental health will understand the range of facilities that are available and can be used for appropriate placement within the county, adjacent to the county, or, if necessary, further removed from the home.

Should state hospitals always be considered?

AB 3632 is not to be used to place pupils in state hospitals or other inpatient psychiatric hospitals. If the child is in need of intensive treatment in a locked facility, then it is Mental health's responsibility to meet the child's placement needs. This is not an education placement issue.

10. *Can AB 3632 money be used for residential facilities that add day treatment components to their programs not paid for with the AFDC rate?*

Answer: AB 3632 monies are to be used for three things:

1. Assessment
2. Case management
3. Treatment

Mental health treatment services provided by residential facilities are identified as Community Care Facility (CCF) Augmentation, rather than "day treatment." Refer to the Cost Reporting Data Collection (CR/DC) Manual, Service Mode 10, Service Functions 50-59. AB 3632 funds can be used to pay for these mental health treatment services when these services are identified on the IEP. Currently, a limited amount of funding is available at DMH to pay for these services if the child is placed out of county. Facilities must be able to break out any mental health treatment costs, as opposed to their board and care, so that the two programs can be separately identified.

11. *What can local mental health departments do when they receive problematic documentation from a school district?*

a. As an example, one local mental health department received a consent for assessment that did not appear to be legal because it was signed by a nonguardian.

Answer: According to the *Education Code*, the "parent" may " . . . include any person having legal custody of the pupil as well as any adult pupil for whom no guardian or conservator has been appointed and the person having custody of a minor if neither the parent or legal guardian can be notified of the educational actions under consideration. 'Parent' also includes a parent surrogate."

When an agency other than an educational agency places a pupil in an out-of-home placement, it is required by law to identify the individual responsible for representing the interest of the pupil, including who may legally sign the consent for assessment and the IEP.

b. Another example is a packet which failed to include documentation as to services the school has provided or a current, relevant observation.

Answer: The school must always preface a referral packet with a reason for referral to mental health. Interagency agreements should address the issue of content in the referral packets. Title 2 of the *California Code of Regulations* requires the following to accompany any school referral to county mental health to determine whether the pupil requires psychotherapy and other mental health services:

(1) Written parental consent to refer to the county mental health;
(2) Written parental consent for the local education agency and the county mental health to exchange pertinent information;
(3) Written parental consent for the county mental health to observe the pupil in the school environment, when appropriate;
(4) A copy of the assessment reports completed in accordance with Section 56327 of the *Education Code;*
(5) Current, relevant behavior observations in a variety of educational settings;
(6) A report prepared by personnel who provided counseling and guidance to the pupil pursuant to Sections 3051.9 and 3051.10, *Title 5, California Code of Regulations;* and
(7) The proposed date of the IEP team meeting.

When a local mental health department is unsure of the accuracy of the documentation it receives from the LEA, that department must communicate this to the special education director or director of the Special Education Local Plan Area (SELPA).

12. *When does 50 days to complete assessment begin?*

a. At time the guardian signs the district's request for an educational evaluation/ assessment? or
b. When school sends authorization for evaluation along with all needed information?

Answer: Neither. The county mental health has:

(1) Fifteen days from the receipt of the referral from the local education agency to develop an assessment plan and send it to the parents for their signature; and
(2) Fifty days from the receipt of the parent's written permission to assess the pupil, complete the assessment, and to participate in the IEP team meeting.

13. *What can county mental health departments reasonably accomplish with referrals for assessments on students with no prior special education and the guardian or advocates demand that everything be done at once?*

Answer: In following the regulations, a student must first be identified by the local education agency as an individual with exceptional needs. After the school has modified the regular education environment and completed the assessment and observation, the pupil may be referred to mental health. Mental health must have the assessment plan completed within a 15-day period from the parent's consent to assess.

These time lines and requirements are very clear in the *Education Code* and Ch. 26.5 of the *Government Code* (AB 3632). Advocates are aware of these requirements and should not insist that services be provided that are not in keeping with the mandate of AB 3632. Parents or guardians may need to be informed of the AB 3632 requirements.

14. *What can local mental health departments do to implement a pupil's IEP when the limited availability of appropriate services in the county becomes an obstacle to timely provision of services?*

a. Example, there are not enough services, especially placement.
b. Example, there are waiting lists at the community service provider.
c. Example, there is only one facility that can meet the pupil's needs. There are no other choices.

Answer:

(1) Limited resources are a difficult and critical issue in the field of children's mental health services and are not easily resolved. However, here are some possible alternatives.

If a local facility (i.e., residential placement) does not have any treatment component, mental health may patch that facility or contract with another private provider to provide the mental health treatment needed. Mental health may also choose to directly provide those pupils placed in certain facilities with the mental health services as outlined in the IEP.

(2) If local treatment programs have waiting lists and you are aware that the average length of stay of youth in the facilities is nine months or so, you will know that the facility will not be available for use in the appropriate period of time. Therefore, concerted, cooperative efforts must be made by mental health and education to find another appropriate facility either within the county or adjacent counties.

(3) The issue of "only one facility that can meet the pupil's needs" is again the issue of limited resources and difficult to resolve. This is especially true if a parent is determined that his/her child be placed in a particular facility. The IEP team must agree and with the agreement of education and mental health, the service plan must be geared toward an interim service until the most appropriate facility is available. For example, the two agencies may work with social services to see about the development of a therapeutic foster home or other combined services to provide for the pupil and family until an appropriate facility is available.

15. *Patching funds to residential facilities for augmented mental health services.*

a. Can or should it be done?
b. Some counties are doing it and making it difficult for those who don't.

Answer:

(1) The patch issue is another difficult issue and is unresolved for many local mental health departments. There are questions relating to the services provided with a patch agreement. For example, how can the local mental health department staff ensure that the services are provided as stated in the IEP and that the rate is a reasonable one? LMH development of clear "purchase of service" contracts and consistent monitoring of those contracts should ensure that services are provided as stated in the IEP.

DMH requires that "patch" costs are for mental health treatment. DMH approves the negotiated rate and the net negotiated amount contracts. This issue will continue to be dealt with in future rate setting discussions.

(2) Counties must meet the needs of the pupils in their communities pursuant to their IEPs. It may be necessary for some counties to purchase additional services because their county has limited resources.

16. *Timely provision of services: Must services be provided within 15 days after IEP?*

The federal law requires the implementation of the IEP as soon as possible. There can be delays for extenuating circumstances, but generally 15 days delay is usually the extent that is acceptable.

The IEP includes the treatment goals and objectives for the pupil. The IEP must state how frequently that service will be provided, what the service is, and what the outcomes are to be.

The frequency section of the IEP should state when that treatment is to begin.

The IEP team is responsible to know the starting date for services so that at the time the parent signs the IEP, there is no misunderstanding as to the starting date of the program or the frequency and duration of the various services to be provided.

17. *Supervision—monitoring of facilities.*

What is local mental health's obligation—right to do so vis-a-vis licensing?

Answer: Mental health has an obligation to ensure that children are placed in facilities that are licensed and in good standing. Mental health has no obligation nor right to monitor facilities regarding licensing by DSS. The obligation of local mental health as a case manager to a pupil placed in a facility is to see that the pupil's IEP is being carried out, assess the success of the treatment being provided, and make provisions for the continuation of that treatment or change in that treatment in order to meet the child's needs. Mental health's responsibility is only that of assessment, case management, and treatment for the pupil. Mental health staff are also responsible for reporting any instances of child abuse pursuant to the Child Abuse Reporting Law, *Penal Code* Section 11165, et al, and the *Welfare and Institutions Code* Section 307.5.

18. *How often can we make face-to-face visits with students? Once a month?*

Answer: The regulations state that a case manager must see a pupil at least once every three months. It is recommended that contact be made once a month or more frequently. Monthly visits with the pupil may allow case managers to better evaluate the treatment that is taking place and that the pupil's needs are being met. During a visit the pupil's progress can be monitored with regard to reunification with his/her family or a move to a less restrictive environment.

19. *Issue: Travel reimbursement by school to parents.*

a. What kind of travel is reimbursable?
b. What frequency of trips should be reimbursed?

Answer: If an IEP requires transportation for parents to and from the nonpublic school, the IEP team will specify the type of transportation to be provided. When necessary for the parents to transport the pupil to the facility, they are to be reimbursed pursuant to Section 3066(g)(4) of the *California Code of Regulations*.

20. *Issue: Six month IEP pursuant to Section 60110 of the California Code of Regulations, Title 2.*

a. Are they being held?

Answer: In most cases, yes.

b. When are they held, six months from last IEP or six months from placement date?

Answer: Within six months of the date of the last IEP meeting.

c. Who has responsibility to schedule?

Answer: Since more of the school staff is involved and the schools have frequent contacts with the parent, it is recommended that the IEP administrator schedule the six month meeting at the close of the IEP team meeting before the members of the expanded IEP team disperse. This should be addressed in the interagency agreement.

21. *What can local mental health do when school districts are uncooperative regarding assessment recommendations?*

Answer: Any questions concerning the assessment recommendations should be discussed at the meeting that the county mental health staff conducts with the parents and appropriate educational staff PRIOR to the IEP meeting.

Most problems surface when county mental health assesses a pupil and immediately recommends out-of-home placement. Such a recommendation is in violation of *Government Code* Section 26.5, which states that the expanded IEP team must first determine whether the pupil's " . . . needs can reasonably be met through any combination of nonresidential services, preventing the need for out-of-home care."

When a district refers the pupil to county mental health to determine the need for "psychotherapy and other mental health services," this is a referral for a related service. The district's IEP team will act on county mental health's recommendations.

The local interagency agreement between county mental health and all of the SELPAs within the county should address the referral process protocol and the procedures for settling disagreements between the two agencies. In the event of a stalemate, the local mental health can request assistance from the Department of Education's Special Education Division field consultant.

22. *Is there anything we can do when foster care facilities will not accept an AB 3632 child who is not Medi-Cal eligible or who has been determined by the facility to have no or poor medical coverage?*

Answer: According to the State Department of Health Services (SDHS), AB 3632 children must have their Medi-Cal eligbility determined as family members because there is no statutory authority to waive parental financial responsibility requirements under federal Medicaid rules as long as the parent(s) retain care, custody, and control of their child. Therefore, SED children placed out of home pursuant to an IEP must have their eligibility for Medi-Cal determined under existing statutory and regulatory requirements.

A foster care group home is a nonsecured, privately operated residential home of any capacity that provides services in a group setting to children in need of care and supervision, and which is licensed as a community care facility by the Department of Social Services (DSS). Several facilities have expressed the concern of financial responsibility related to a child who is placed within the facility without appropriate medical coverage. The facilities feel they could be held financially responsible for medical costs incurred during an emergency, based on the position that the child has been placed in their care.

In order to prevent this situation, several facilities have taken the approach of not accepting any child who does not have the appropriate medical coverage.

It is suggested that the appropriate placement agency work with the foster care facility to assure the facility that the financial responsibility for the medical costs associated with the AB 3632 child placed with them remains with the parent(s) as long as care, custody,

and control of the child is retained by the parent(s) and not a county agency. In relation to a foster care facility refusing to accept any child for placement, there is no statutory authority to require a privately operated residential home to accept a child who it feels is not appropriate for the facility for any reason.

23. *How are SSI payments received by a family of an AB 3632 child affected by the out-of-home care placement of the child pursuant to an IEP?*

Answer: The payee of a SSI payment (the family) is the responsible agent in notifying the Social Security Administration (SSA) of the placement change of the child. The SSA's income eligibility standards recognize a prorated portion of the AB 3632 placement costs as additional income to the family.

In receiving this information, the SSA redetermines the family's SSI eligibility. This could have a direct impact on the family's continued SSI eligibility or level of payment.

Also, if the child's Medi-Cal eligibility was established based on the SSI eligibility, this could be affected. If the SSI income redetermination establishes that the family is no longer SSI eligible, the SED child will have eligibility for Medi-Cal redetermined under existing statutory and regulatory requirements. The positions taken by SSA and SDHS are based on the absence of statutory authority to waive parental financial responsibility and the fact that the parent(s) have retained care, custody, and control of the child.

24. *How do we arrange the placement of AB 3632 children who are eighteen years and older?*

Answer: Welfare and Institutions Code (WIC) Section 18350 states that payments shall be made only to children placed in privately operated residential facilities licensed in accordance with the Community Care Facilities Act. In addition, it further states that the payments shall be based on rates established in accordance with Sections 1461, 11462, and 11463 and on providers' actual costs.

AB 3632 provides placement for an SED child pursuant to an IEP up to the child's twenty-second birthday. The Community Care Licensing Bureau licenses both children and adult residential facilities.

Children's facilities provide board and care for children to the age of eighteen, with adult facilities serving the population of eighteen and older. Licensing regulations allow the granting of waivers for children who have reached the age of eighteen to remain in a children's facility or for a child under the age of eighteen to be placed in an adult facility.

Services for an SED child placed out of home pursuant to an expanded IEP are eligible for AB 3632 funding in an adult or children's residential facility that has been licensed in accordance with the *Community Care Facilities Act* and has an SDSS-approved board and care rate.

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Appendix 16

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